EXHIBIT D-2

AMENDED & RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

RED FIBER HOLDINGS LLC

(A DELAWARE LIMITED LIABILITY COMPANY)

DATED AS OF [ullet]

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AMERICAS 1019@392 LA_LAN01:359839.4 This AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT of Red Fiber Holdings LLC (the "<u>Company</u>"), dated as of [●]¹ (the "<u>Effective Date</u>"), by and among the Company, MIP V RF Partners L.P., a Delaware limited partnership (as further defined in this Agreement, the "<u>MIP Member</u>"), Ares RF Holdings L.P., a Delaware limited partnership (as further defined in this Agreement, the "<u>Ares Member</u>"), REST Nominees No. 2 Pty Ltd, an Australian proprietary limited company, in its capacity as trustee of the REST US Infrastructure No. 2 Trust (as further defined in this Agreement, the "<u>REST Member</u>"), [*Name of Incentive LP*], a Delaware limited partnership ("<u>Incentive Member</u>"), and together with any other Persons listed on <u>Exhibit A</u>, as may be further amended from time to time in accordance with the terms of this Agreement (each, a "<u>Party</u>", and collectively, the "<u>Parties</u>"). All capitalized terms used in this Agreement have the meaning ascribed to such terms in Exhibit B.

$\underline{W} \underline{I} \underline{T} \underline{N} \underline{E} \underline{S} \underline{S} \underline{E} \underline{T} \underline{H}$:

WHEREAS, pursuant to the certificate of formation filed with the Secretary of State of the State of Delaware on February 27, 2020, the Company was formed as a limited liability company under the Act;

WHEREAS, on February 27, 2020, the MIP Member adopted that certain Limited Liability Company Agreement of the Company (the "<u>Initial LLC Agreement</u>") as the sole member of the Company;

WHEREAS, on March 13, 2020, the Company caused its indirect wholly-owned subsidiary Red Fiber Parent LLC, a Delaware limited liability company ("<u>Parent</u>"), and Parent's direct wholly-owned subsidiary RF Merger Sub Inc., an Ohio corporation ("<u>Merger Sub</u>"), to enter into that certain Agreement and Plan of Merger (the "<u>Merger Agreement</u>") with Cincinnati Bell Inc., an Ohio corporation ("<u>CBB</u>");

WHEREAS, on February 28, 2020, MIP V (FCC) AIV, L.P., on behalf of MIP Member and its direct and indirect equity holders, ("MIP V") and Ares Special Situations Fund IV, L.P. and ASOF Holdings I, L.P., on behalf of Ares Member and its direct and indirect equity holders, entered into that certain Transaction Conduct Agreement whereby: (i) MIP V agreed to cause the MIP Member to contribute or to be caused to be contributed \$[●], of which \$[●] will be contributed by MIP Member (the "MIP Member Contribution") and \$[●] will be contributed by REST Member (the "REST Member Contribution"); and (ii) Ares agreed to cause the Ares Member to contribute \$[●] (the "Ares Member Contribution");²

WHEREAS, on the date of this Agreement, the Company and each of the Ares Member, the REST Member and the MIP Member entered into Subscription Agreements (each, a "<u>Subscription Agreement</u>"). Among other things, the Subscription Agreements respectively provide that: (i) the MIP Member agreed to contribute the MIP Member Contribution to the Company in exchange for [[]]% of the Common Units and [] % of the Series A Preferred Units issued and outstanding on the date of this Agreement; (ii) the REST Member

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NOTE TO FORM: To be dated date of Closing under Merger Agreement.

agreed to contribute the REST Member Contribution to the Company in exchange for []% of the Common Units and % of the Series A Preferred Units issued and outstanding on the date of this Agreement and (iii) the Ares Member agreed to contribute the Ares Member Contribution to the Company in exchange for % of the Series A Preferred Units issued and outstanding on the date of this Agreement;

WHEREAS, concurrently with the effectiveness of this Agreement, Merger Sub will merge with and into CBB (the "Merger") in accordance with the Merger Agreement. As a result of the Merger, CBB will be the surviving corporation, and the Company, indirectly, will hold 100% of the shares of CBB (the "Transaction");

WHEREAS, upon closing of the Transaction and consummation of the transactions contemplated by the Subscription Agreements, the Company will issue, and each Member will own, the number of Units set forth opposite its name on the schedule of Members attached to this Agreement as Exhibit A; and

WHEREAS, in connection with the foregoing, the Parties desire to enter into this Agreement in order to: (a) effect the admission of the Ares Member as a Member; (b) effect the admission of the REST Member as a Member; (c) effect the admission of the Incentive Member as a Member; (d) effect the issuance of Units to the Members as set forth in this Agreement and (e) provide, among other things, for (i) the management of the business and affairs of the Company, and (ii) the respective rights and obligations of the Members, in the case of each of clauses (a)-(e), on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the Parties mutually covenant and agree as follows:

ARTICLE I

ORGANIZATION

Section 1.1. <u>Name</u>. The name of the Company shall be "Red Fiber Holdings LLC". All business of the Company shall be conducted under such name.

Section 1.2. <u>Management Committee</u>. The Members shall appoint "managers" of the Company within the meaning of the Act (the "<u>Managers</u>") with the authority to manage the Company as a Management Committee (the "<u>Management Committee</u>") pursuant to the terms of <u>Section 5.1</u>. Each Manager shall hold office until his death, resignation or removal, as set forth in Section 5.1.

Section 1.3. <u>Place of Principal Office; Registered Agent</u>. The initial address of the principal office of the Company shall be 125 W 55th Street, New York, NY 10019. The name and address of the registered agent for service of process on the Company in the State of Delaware shall be designated in the Company's Certificate of Formation, as amended from time to time. On ten days' prior Notice to all Members, the Management Committee may at any time change the location of the Company's principal office to another location or change the registered agent, if the Management Committee deems it advisable.

- Section 1.4. <u>Purpose of Activities</u>. The Company is organized for any lawful purpose or activity permitted by the Act.
- Section 1.5. <u>Term.</u> The Company shall continue in existence from the date of this Agreement until the Company is terminated pursuant to <u>Article XI</u>.
- Section 1.6. <u>Fiscal Year</u>. The fiscal year of the Company (the "<u>Fiscal Year</u>") shall be the calendar year.

Section 1.7. Filings.

- (a) The Certificate of Formation was filed with the Secretary of State of Delaware on February 27, 2020, by an "authorized person" within the meaning of the Act. The Management Committee shall use commercially reasonable efforts to cause amendments to the Certificate of Formation to be executed and filed whenever required by the Act.
- (b) The Management Committee shall use commercially reasonable efforts to take such other actions as may be necessary to perfect and maintain the status of the Company as a limited liability company under the laws of the State of Delaware.
- (c) Subject to Section 1.8, the Management Committee shall cause the Company to be qualified, formed or registered under assumed or fictitious name statutes or similar laws in any jurisdiction in which the Company transacts business in which such qualification, formation or registration is required or desirable. Subject to Section 1.8, the Management Committee shall execute, deliver and file any certificates (and any amendments to and/or restatements of such certificates) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business.
- Section 1.8. <u>Limitations on Company Powers</u>. Notwithstanding anything contained in this Agreement to the contrary, the Company shall not do business in any jurisdiction that would jeopardize the limitation on liability afforded to the Members under the Act or this Agreement.
- Section 1.9. <u>No State-Law Partnership</u>. The Members acknowledge and agree that: (i) the Company shall not be a partnership (including a limited partnership) or joint venture; and (ii) no Member shall be an agent, partner or joint venturer of any other Member for any purpose. Nothing in this Agreement shall be construed to suggest otherwise.
- Section 1.10. <u>Admission of Members</u>. The name of each Member is set forth on <u>Exhibit A</u>. Each Member has contributed to or shall be deemed to have contributed to the capital of the Company its Capital Contribution as set forth in <u>Section 2.1</u>. Other Persons may be admitted as Members of the Company from time to time in accordance with <u>Section 2.2</u> and <u>Article VIII</u>.

ARTICLE II

CAPITAL

On the date of this Agreement: (a) the MIP
epresent]% of the total issued
(ii) [Series A Preferred
nd outstanding Series A Preferred Units of
[•] Common Units, which represent []%
e Company, and (ii) [iii] Series A Preferred
utstanding Series A Preferred Units of the
Series A Preferred Units, which
ies A Preferred Units of the Company; and
Units, which represent all of the issued and

Section 2.2. Capital Contributions; New Members.

- (a) No Member shall be required to make any additional Capital Contributions to the Company in excess of the Capital Contribution set forth on Exhibit A opposite such Member's name without such Member's prior written consent. In addition, no Member shall be permitted to make any additional Capital Contributions to the Company without the approval of the Management Committee, subject to compliance with the preemptive rights provided for in Section 2.2(b).
- If the Company proposes to issue New Units, then each Member (other than the Incentive Member) shall have the right, but not the obligation, to acquire such New Units: (i) in the form being issued and irrespective of the type of Units each such Member holds at the time of the issuance of any New Units; (ii) pro rata based on its Percentage Interest; and (iii) on not less than ten Business Days' advance notice (such notice, the "Preemptive Rights Notice") on the most favorable terms and conditions offered to any existing or potential new Member. Unless otherwise determined by the Management Committee (and agreed to by each Series A Preferred Member, if any), each issuance of New Units shall be at the Unit FMV. In response to a Preemptive Rights Notice, such Member shall specify the maximum number of New Units for which such Member is willing to subscribe. If no response is received from any Member prior to the deadline specified in the Preemptive Rights Notice (which deadline will be no sooner than ten Business Days from the date such Preemptive Rights Notice is received by the applicable Member), such Member shall have been deemed to have declined to participate in such issuance of New Units. If any Member does not elect to fully participate in such issuance of New Units, then such remaining unsubscribed portion of such issuance shall be allocated on a pro rata basis among the Members who did elect to fully participate in such issuance (each such Member, a "Fully Participating Member") based on the quotient obtained by dividing such Fully Participating Member's Distribution Units by the aggregate Distribution Units held by all Fully Participating Members, up to the maximum amount that such Member specified that it would subscribe for in its election, or such other amount as shall be mutually agreed upon among the Fully Participating Members. Each Member participating in any issuance of New Units shall have no less than fifteen Business Days from the date on which such Member's final investment amount is determined to fund such amount. For convenience of

administration, upon no less than three Business Days' notice to each Founding Member, the Company may sell New Units requiring the delivery of a Preemptive Rights Notice without first delivering a Preemptive Rights Notice and offering the Members the opportunity to participate in such sale in compliance with this Section 2.2(b), so long as: (i) the Company provides each Member (A) written notice of such sale within two Business Days after the consummation of such sale and the Management Committee's determination of Unit FMV (without limiting Section 11.18(c)), and (B) ten Business Days after delivery of such notice of sale (or if later three Business Days after determination of Unit FMV in accordance with Section 11.18(c)) to decide whether to purchase its pro rata portion of the applicable New Units based on its Percentage Interest; (ii) within fifteen Business Days after the delivery of such notice of sale to such Member (or if later eight Business Days after determination of Unit FMV in accordance with Section 11.18(c)), the Company sells to each such Member the New Units each such Member elects to purchase pursuant to this Section 2.2(b) providing such Member with substantially the same investment opportunity if such offering were made prior to the initial sale (including the same terms and conditions (including price and overallotment rights) as such Member would be entitled to in such case; and (iii) no Member's Percentage Interest will be deemed to have changed as a result of the sale of any New Units until after the time period in paragraph (ii) has elapsed. In connection with any such acquisition of New Units and upon the admission of any new Member to the Company pursuant to this Section 2.2(b), the Percentage Interests of the Members shall be adjusted to reflect such acquisition of New Units and the admission of any such new Member. If applicable with respect to any acquisition of New Units, a similar calculation and adjustment shall be made to the Common Percentage Interest. If an adjustment is made pursuant to this Section 2.2(b), Exhibit A and the books and records of the Company shall be amended accordingly. The Parties acknowledge and agree that any such adjustment shall not be considered an amendment to this Agreement. The Parties also agree that certificates representing such New Units may be issued as appropriate in accordance with Article III. The Members may exercise their rights pursuant to this Section 2.2(b) through their respective Qualifying Related Parties mutatis mutandis.

(c) The Management Committee may issue additional Membership Interests in the form of Common Units, Series A Preferred Units or any other New Units, and admit a new Member or new Members, as the case may be, to the Company, only if the Company has complied with the preemptive rights provided for in Section 2.2(b). The foregoing issuance of additional Membership Interests or admission of new Members shall only be valid if such new Member: (i) has delivered to the Management Committee its Capital Contribution, if any; (ii) has agreed in a writing satisfactory in form to the Management Committee to be bound by the terms of this Agreement by becoming a Party; and (iii) has delivered such additional documentation as the Management Committee shall reasonably require to admit such new Member to the Company.

Section 2.3. <u>Return of Capital; Interest.</u> No Member shall be entitled to: (i) withdraw any part of its Capital Contribution, (ii) receive interest or other earnings on its Capital Contribution, or (iii) receive any distributions from the Company, except in each case as expressly provided in this Agreement. No Member shall be entitled to resign or withdraw from the Company except as expressly provided in this Agreement. No Member shall be entitled to receive any distribution or otherwise receive the fair market value of its Membership Interest in compensation for any purported resignation or withdrawal not in accordance with the terms of this Agreement. The Preferred Units shall be automatically and immediately cancelled at such time as all

distributions and/or other payments in respect of such Preferred Units under this Agreement have been paid in full, and any and all related obligations fully satisfied, in strict accordance with the terms of this Agreement (including any and all amounts under <u>Articles III</u>, <u>IV</u> and <u>IX</u> of this Agreement).

ARTICLE III

MEMBERSHIP INTERESTS

Section 3.1. Company Interests.

- (a) A Member's "Membership Interest" means the entire ownership interest of such Member in the Company, including any and all rights, powers and benefits accorded a Member under this Agreement and the duties and obligations of such Member under this Agreement. A Member's Membership Interest shall be represented by the number of Units issued to such Member, from time to time, reflecting the proportion of such Member's Membership Interests at the relevant time such Membership Interests were issued.
- (b) The common units issued to each Member ("Common Units") shall be set forth opposite such Member's name in Exhibit A. A Member holding Common Units, in his, her or its capacity as such, is referred to as a "Common Member". The "Common Percentage Interest" of each Common Member shall be equal to a fraction, the numerator of which is the number of Common Units owned by such Common Member and the denominator of which is the sum of all outstanding Common Units. The ownership by a Member of Common Units shall entitle such Member to the rights and distributions of cash and/or other property with respect to Common Units as set forth in Article III and Article IV.
- (c) The preferred units issued to each Member ("<u>Preferred Units</u>") shall be set forth opposite such Member's name in <u>Exhibit A</u>. Initially, the Preferred Units shall be issued in one series, the Series A Preferred Units ("<u>Series A Preferred Units</u>"). A Member holding Series A Preferred Units, in his, her or its capacity as such, is referred to as a "<u>Series A Preferred Member</u>". The ownership by a Member of Preferred Units shall entitle such Member to the rights and distributions of cash and/or other property with respect to Preferred Units as set forth in <u>Article</u> III and Article IV.
- (d) The incentive units issued to the Incentive Member ("<u>Incentive Units</u>") shall be set forth opposite the Incentive Member's name in <u>Exhibit A</u>. The ownership by the Incentive Member of Incentive Units shall entitle the Incentive Member to the rights and distributions of cash and/or other property with respect to Incentive Units as set forth in <u>Article III</u> and <u>Article IV</u>.
- (e) In the event of a Transfer or other change in the ownership of Units in accordance with this Agreement, Exhibit A (and, if applicable, the Schedules and Annexes to this Agreement) shall be adjusted accordingly (it being understood that any such adjustment shall not be considered an amendment to this Agreement).

Section 3.2. <u>Certificates</u>. All Units issued under this Agreement shall be uncertificated unless otherwise determined by the Management Committee.

Section 3.3. Rights of Common Members.

- (a) Generally. The Common Members: (i) subject to Section 4.1(a), shall be entitled to the distributions, if any, as set forth in Article IV with respect to Common Units that may be declared from time to time by the Management Committee, out of Distributable Cash; (ii) shall not be subject to any right of redemption by the Company in respect of such Common Member's Common Units; (iii) shall have no conversion or exchange rights in respect of such Common Member's Common Units; and (iv) shall be entitled to one vote per Common Unit held by such Common Member on matters submitted to a vote or consent of the Common Members.
- (b) <u>Liquidation Rights</u>. In the event of a liquidation, dissolution or winding up of the affairs of the Company but in all events subject to the rights of the Series A Preferred Members and, if applicable, the Incentive Member and the applications of dissolution proceeds set forth in <u>Section 10.3</u>, the Common Members shall be entitled to be paid the remaining net assets of the Company ratably as provided in <u>Section 10.3(c)(iv)</u>.

Section 3.4. Rights of the Series A Preferred Members.

- (a) Generally. The Series A Preferred Members: (A) shall be entitled to the distributions provided for in Section 10.3 upon liquidation, dissolution or winding up of the Company in accordance with the terms of this Agreement in priority of any distributions on Common Units or Incentive Units pursuant to Section 10.3 so long as any Series A Preferred Units are outstanding; and (B) subject to Section 4.1(a), shall be entitled to the distributions, if any, as set forth in Article IV that may be declared from time to time by the Management Committee, out of Distributable Cash.
- (b) <u>Voting Rights</u>. In addition to the rights provided for in <u>Section 5.5</u> and <u>Section 6.1</u>. (f), each Series A Preferred Member shall be entitled to vote on any matter submitted to a vote or consent of the Common Members. For each such matter, each Series A Preferred Member shall be entitled to vote its Percentage Interest.
 - (c) <u>Conversion</u>. The Series A Preferred Units shall be convertible as follows:



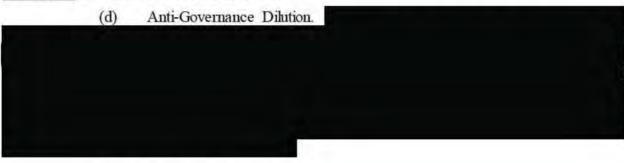


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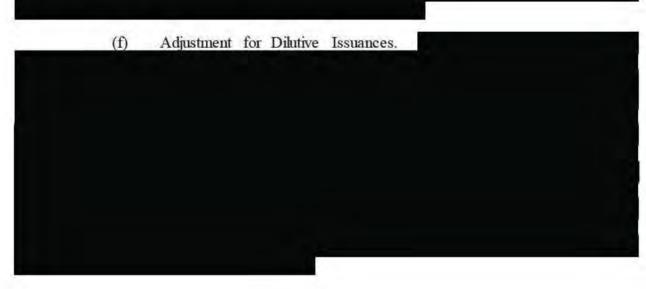
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Notwithstanding anything to the contrary contained in this Agreement, at the time of conversion of any Series A Preferred Unit as set forth in this Section 3.4(c), the applicable Series A Preferred Member shall remain entitled to receive any declared but unpaid distributions in accordance with Section 4.1 on such Series A Preferred Unit.



(e) Automatic Conversion.



(g) <u>Unit FMV</u>. Upon the written request of any Member having the right to convert or cause the conversion of Series A Preferred Units, the Management Committee (and if applicable the Founding Members) shall make a determination of the Unit FMV in accordance with Section 11.18.

Section 3.5. Rights of the Incentive Members

- (a) Generally. The Incentive Member: (A) shall be entitled to the distributions provided for in Section 10.3 upon liquidation, dissolution or winding up of the Company in accordance with the terms herewith so long as any Incentive Units are outstanding; and (B) subject to Section 4.1(a), shall be entitled to the distributions, if any, as set forth in Article IV with respect to Incentive Units and as shall be declared from time to time by the Management Committee, out of Distributable Cash. The Incentive Units shall be subject to cancellation and forfeiture in accordance with the incentive plan governing the issuance and allocation of such Incentive Units as in effect from time to time.
- (b) <u>Voting Rights</u>. The Incentive Member shall not have any voting, approval or consent rights under this Agreement or the Act with respect to the Incentive Units held by such Person, including with respect to any matters to be decided by the Company or any other governance matters described in this Agreement, and each holder of Incentive Units, by its acceptance thereof, expressly waives any consent, approval or voting rights or other rights to participate in the governance of the Company, whether such rights may be provided under the Act (including under Sections 18-209(b), 18-301(b)(1), 18-304, 18-302(a) and 18-806 of the Act) or otherwise.
- (c) <u>Liquidation Rights</u>. In the event of a liquidation, dissolution or winding up of the affairs of the Company, the Incentive Member shall, subject to the rights of the Series A Preferred Members and Common Members, be entitled to be paid the amounts, if any, ratably as provided in Section 10.3.

ARTICLE IV

DISTRIBUTIONS

Section 4.1. Distributions.

- (a) Subject to <u>Article X</u>, the Company shall make distributions to the Members out of (and to the extent of) Distributable Cash as follows:
 - (i) at all times prior to the anniversary of the Effective Date, at such times and in such manner as the Management Committee shall determine in its sole discretion, to the holders of Distribution Units pro rata in accordance with each Member's then-current Percentage Interest; and
 - (ii) with respect to each Quarterly Date to occur after the anniversary of the Effective Date, within fifteen Business Days of such Quarterly Date:

- (A) *first*, to each Series A Preferred Member, the Series A Preferred Cash Dividend for such Series A Preferred Member:
- (B) second, to each Common Member, its pro rata portion, in accordance with its Common Percentage Interest, of an amount that causes the distributions made in accordance with [Section 4.1(a)(ii)(A)] and this [Section 4.1(a)(ii)(B)] to have been made pro rata to all Members in accordance with their respective Percentage Interests (or if less the remaining Distributable Cash (if any)); and
- (C) *third*, solely to the extent approved by the Management Committee in its sole and absolute discretion, to each Member, its pro rata portion, in accordance with its Percentage Interest, in the remaining Distributable Cash (if any) as of such Quarterly Date;

<u>provided</u>, that if any such distribution to Members would result in more than a Minimum Return, then the Incentive Percentage of any distribution in excess of such Minimum Return shall be allocated pro rata to the Incentive Units.

Section 4.2. <u>Form of Distribution</u>. Regardless of the nature of the Member's Capital Contribution, a Member has no right to demand or receive any distribution from the Company in any form other than money (US Dollars). No Member may be compelled to accept from the Company, nor shall the Company request that a Member accepts, a distribution of any asset in kind (including any securities) in a manner disproportionate to any other Member.

Section 4.3. Withholding Taxes.

Authority to Withhold; Treatment of Withheld Tax. Notwithstanding any (a) other provision of this Agreement, each Member authorizes the Company to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Company or any of its Affiliates with respect to such Member or as a result of such Member's participation in the Company. Any such payment or withholding shall be done pursuant to the Code or any provision of U.S. federal, state or local or non-U.S. tax law. If and to the extent that the Company shall be required to withhold or pay any such withholding or other taxes with respect to a Member, such Member shall be deemed for all purposes of this Agreement to have received a payment from the Company as of the time such withholding or other tax is required to be paid. Any such payment shall be deemed to be a distribution of Distributable Cash pursuant to the relevant clause of Section 4.1 with respect to such Member's Membership Interest to the extent that such Member (or any successor to such Member's Membership Interest) would have received a distribution but for such withholding. To the extent that the aggregate of such payments with respect to a Member for any period exceeds the distributions that such Member would have received for such period but for such withholding, the Management Committee shall notify such Member as to the amount of such excess and such Member shall make a prompt payment to the Company of such amount. Any withholdings by the Company referred to in this Section 4.3(a) shall be made at the maximum applicable statutory rate under the applicable tax law unless the Management Committee shall have received an opinion of counsel or other evidence, satisfactory to the Management Committee, to the effect that a lower rate is applicable, or that no withholding is applicable, including pursuant

to applicable treaties. The Management Committee shall reasonably cooperate with any applicable Member to reduce or eliminate any such withholdings.

- (b) <u>Withholding from Distributions of Property</u>. If the Company makes a distribution in kind and such distribution is subject to withholding or other taxes payable by the Company on behalf of any Member, such Member shall make a prompt payment to the Company of the amount required to be withheld.
- (c) <u>Indemnification</u>. To the fullest extent permitted by Applicable Law, the Company shall indemnify and hold harmless each Person who is or who is deemed to be the responsible withholding agent for U.S. federal, state or local or non-U.S. income tax purposes against all claims, liabilities and expenses of whatever relating to such Person's obligation to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Company or as a result of a Member's participation in the Company. The Company's obligation under this <u>Section 4.3(c)</u> shall in no circumstance require indemnification for any claims, liabilities and expenses in the nature of penalties and accrued interest that result from an indemnified Person's gross negligence, willful misconduct, fraud or bad faith.

ARTICLE V

OPERATIONS AND MANAGEMENT

Section 5.1. Exclusive Authority to Manage.

(a) Except as provided in the Act or as expressly provided in this Agreement, the Management Committee shall have the exclusive power and authority over the conduct of the Company's business, operations and affairs. On behalf and in the name of the Company the Management Committee is authorized and empowered to: (i) carry out the purposes of the Company and (ii) perform all acts, and to enter into and to perform all contracts and other undertakings, which the Management Committee may in its sole discretion deem necessary or advisable, or which are incidental, to carry out the purposes of the Company and which are not in contravention of this Agreement. Any action taken by the Management Committee shall constitute the act of and serve to bind the Company and each Member (in its capacity as a Member) and such Member's respective Manager, in each case in accordance with this Section 5.1. The Management Committee shall be the sole Person with the power to bind the Company, except to the extent that such power and authority is expressly delegated to any other Person by the Management Committee or this Agreement. No delegation of power and authority by the Management Committee shall cause the Management Committee to cease to be, or otherwise diminish the responsibilities of, the Management Committee of the Company. The Management Committee shall be composed of: (i) Managers nominated by the Members in accordance with Section 5.1(b); (including a Manager nominated by each Founding Member who continues to hold its Requisite Holding); (ii) one Independent Manager nominated by Management Committee; and (iii) the Chief Executive Officer of CBB, ex officio. At any time there is a vote of Members with respect to the Management Committee, each Member shall: (i) vote all of the Units held by such Member and all other Units over which he, she or it has voting control; and (ii) take all other necessary or desirable actions within his, her or its control (whether in his, her or its capacity as a Member,

Manager or Officer of the Company) in order to cause, elect and maintain a Management Committee with the composition set forth in this <u>Section 5.1</u>. The Company shall also take all necessary or desirable action within its control to maintain a Management Committee with the composition set forth in this Section 5.1.

- appointed one Manager for each full 14% Percentage Interest held by such Member. Notwithstanding the foregoing: (i) for so long as the MIP Member holds over 50% of the Distribution Units, the MIP Member shall have the right to appoint five Managers; and (ii) for so long as the Ares Member holds its Requisite Holding, the Ares Member shall have the right to appoint two Managers. If any Member elects to appoint less than the number of Managers for which it is entitled to appoint in accordance with this Section 5.1(b), then the total votes of the Managers appointed by such Member as of any date shall be determined based on the maximum number of Managers such Member has the right to nominate in accordance with this Section 5.1(b). Such total votes may be allocated by written notice to the Company among the Managers actually nominated by such Member. If on any date the number of Managers appointed by a Member exceeds the number specified in this Section 5.1(b), then such Member shall cause one or more Managers to resign with immediate effect such that the number of Managers nominated by such Member and appointed to the Management Committee does not exceed such number.
- (c) A Manager may resign at any time by giving at least fifteen days' Notice to the Members and the Company. Subject to <u>Section 5.1(e)</u>, the resignation of a Manager shall take effect upon the acceptance of such resignation by the Management Committee or the expiration of such fifteen-day notice period or such later time as shall be specified in such Notice. The acceptance of any such resignation shall not be necessary to make it effective.
- (d) With or without cause and at any time, a Member Manager may only be removed by the Member that nominated such Member Manager in accordance with Section 5.1(b) by written Notice delivered to the Company. Such removal will be effective upon the date stated in the Notice or, if no date is stated, upon delivery of Notice by the applicable Member to the Company.
- (e) A vacancy occurring for any reason in the position of a Manager (other than the Chief Executive Officer of CBB) shall be filled in accordance with <u>Section 5.1(b)</u> or <u>Section 5.5(a)</u> (as applicable).
- (f) Except as expressly authorized by the Management Committee or this Agreement, no Member shall have any right or authority to take any action on behalf of the Company with respect to third parties.
- (g) Other than (i) Subsidiaries that are, as of the Effective Date, not member-managed limited liability companies and (ii) Subsidiaries that are acquired after the Effective Date (subject to any consents otherwise required under this Agreement) and are not limited liability companies at the time of acquisition, each Subsidiary shall be a member-managed limited liability company unless the Management Committee determines that another form of entity is required by Applicable Law or by any financing which such Subsidiary is subject to (or is anticipated to be subject to). If any Subsidiary is not a member-managed limited liability company, then each board

of managers, board of directors or similar governing body of such Subsidiary (each, a "Subsidiary Board") shall have the same composition of Member-appointed managers or directors as provided under Section 5.1(a) for the appointments to the Management Committee. The Company and the Management Committee shall take all such actions as shall be necessary from time to time to cause said elections or appointments to each such Subsidiary Board. If, at any time, any Subsidiary Board or any committee of a Subsidiary Board (A) proposes to exercise its independent decision making power in a manner inconsistent with or independent from prior decisions of the Management Committee or (B) proposes to resolve or otherwise contemplates resolving to take any material action that is inconsistent with the decisions of the Management Committee, or that were not the subject of discussion or resolution of the Management Committee or that otherwise is beyond the scope of prior decisions of the Management Committee or beyond the authority of the Management Committee, then such Subsidiary Board or committee shall not exercise such decision making power or pass such resolution. Rather, such Subsidiary Board or committee shall adjourn the relevant meeting, and the relevant matter shall be subject to the approval of the Management Committee in accordance with this Agreement. For the avoidance of doubt, the prohibition set forth in the preceding sentence shall not apply to any delegations of authority by the Management Committee to such Subsidiary Board or committee or to other ministerial and routine actions reasonably taken by the Subsidiary Board or committee to implement decisions made by the Management Committee. Notwithstanding the foregoing, if the exercise of such decision making power or the passing of such resolution is required to be taken by the relevant Subsidiary Board or committee in the exercise of fiduciary duties, then: (i) the relevant meeting shall be adjourned; (ii) each Manager of the Management Committee shall be appointed to such Subsidiary Board or committee; (iii) and the exercise of such decision making power or the passing of such resolution shall require the approval of the relevant Subsidiary Board or committee. Any appointment of members to a Subsidiary Board or a committee of a Subsidiary Board in accordance with the immediately preceding sentence shall be effective solely for the purpose of the exercise of the relevant decision making power or the passing of the relevant resolution. The Persons appointed in accordance with the foregoing shall resign promptly following the exercise of the relevant decision making power or the passing of the relevant resolution.

For so long as each Founding Member or any Section 5.2. Observers. Qualifying Related Party holds its Requisite Holding, the Company shall invite a representative of each such Member (as applicable), which representatives shall initially be the individual designated by the MIP Member as its representative to the other Members, the individual designated by the Ares Member as its representative to the other Members and the individual initially designated by the REST Member as its representative to the other Members (the "Observers"), to attend all meetings of the Management Committee in a non-voting observer capacity and, in this respect, shall give such representative copies of all notices, minutes, consents, and other materials that it provides to its Managers at the same time and in the same manner as provided to such Managers; provided, that each Observer shall agree in writing to comply with the confidentiality obligations set forth in Section 11.15 with respect to all information so provided; and provided, further, that the Company reserves the right to (a) exclude the Observers from any executive sessions held by the Management Committee and (b) withhold any information and exclude the Observers from any meeting or portion thereof if access to such information or

attendance at such meeting could adversely affect the attorney-client privilege between the Company and its counsel.

Section 5.3. Liability of Covered Persons.

- (a) No Covered Person shall be liable to the Company or any other Covered Person for mistakes of judgment or for any act or omissions suffered or taken by them, or for losses due to any such mistakes, action or inaction, except to the extent that such Covered Person has engaged in fraud, acts of willful misconduct or acts or omissions not in good faith. In addition, no Covered Person shall, solely by reason of being a Covered Person, be bound by, or be personally liable to any third Person for a judgment, decree or order of any Governmental Authority or in any other manner, for the expenses, liabilities or obligations of the Company, whether arising in contract, tort or otherwise.
- shall be liable for, and the Company shall indemnify all of the Covered Persons against, and agrees to hold all of the Covered Persons harmless from, all liabilities and claims (including reasonable attorneys' fees and expenses incurred in defending against any claimant seeking to impose any such liabilities and claims) against the Covered Persons, arising from the Covered Persons's performance of their duties or otherwise relating to or arising out of such Covered Person's affiliation or association with the Company. The foregoing exclusion from liability and obligation to indemnify shall not apply to the extent that such Covered Person has been adjudged to have engaged in fraud, willful misconduct or acts or omissions not in good faith. Expenses incurred by any Covered Person who may have a right of indemnification under this Section 5.3(b) in defending a civil or criminal action, suit or proceeding shall be paid by the Company in advance of the final disposition of such action, suit or proceeding. The Company's advancement obligation set forth in the preceding sentence is conditioned upon receipt of an undertaking by or on behalf of such Covered Person to repay such amount where such Covered Person has been adjudged to have engaged in fraud, willful misconduct or acts or omissions not in good faith.
- (c) Covered Persons may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. Covered Persons may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisers selected by them, and any action or omission suffered or taken in good faith in reliance and in accordance with the opinion or advice of any such Persons as to matters that the Covered Persons reasonably believe to be within such Person's professional or expert competence shall be conclusively presumed to have been done or omitted in good faith and in accordance with such and shall be full protection and justification with respect to the action or omission so suffered or taken unless such Person had actual knowledge of facts that would materially undermine their ability to rely on such opinion or advice.
- (d) The obligation of the Company under this <u>Section 5.3</u> to indemnify or advance expenses to a Covered Person shall be the primary source of indemnification and advancement of such Covered Person. Any obligation on the part of a Member or any of its Affiliates (excluding, for the avoidance of doubt, the Company and its Subsidiaries) (an "<u>Upstream</u>

Indemnifying Party") with respect to the indemnification and advancement of such Covered Person (such obligation, a "Member Indemnification Agreement") shall be secondary to the Company's obligation and shall be reduced by the amount that the Covered Person may collect as indemnification or advancement from the Company. In the event that the Company fails to indemnify or advance expenses to a Covered Person as required or contemplated by this Agreement (such amounts the "Unpaid Indemnity Amounts") and an Upstream Indemnifying Party makes any payment to such Covered Person in respect of indemnification or advancement of expenses under any Member Indemnification Agreement on account of such Unpaid Indemnity Amounts, such Upstream Indemnifying Party shall be subrogated to the rights of such Covered Person under this Section 5.3 or any similar arrangement or agreement for indemnification or advancement of expenses by the Company (a "Company Indemnification Agreement").

- (e) To the fullest extent permitted by Applicable Law, the Company agrees that its obligation to indemnify a Covered Person under this <u>Section 5.3</u> or any Company Indemnification Agreement shall include any amounts expended by an Upstream Indemnifying Party under any Member Indemnification Agreement in respect of indemnification or advancement of expenses to any Covered Person relating to or arising out of such Covered Person's affiliation or association with the Company.
- (f) The Company shall purchase and maintain director and officer liability insurance, on terms and in an amount approved by the Management Committee, on behalf of any Covered Person, against any liability asserted against such Covered Person or incurred by such Covered Person arising out of its or his status as a Covered Person, whether or not the Company would have the power to indemnify such Covered Person against that liability under this Section 5.3.
- (g) In the event that any Covered Person or former Covered Person shall, notwithstanding any provisions of the Act to the contrary (and solely as a result of the inapplicability, or deemed inapplicability of such provision of the Act), become liable under a judgment, decree or order of a Governmental Authority, or in any other manner, for a debt, obligation or liability of the Company, then the Company shall indemnify such Covered Person or former Covered Person. The Company shall also hold such Covered Person or former Covered Person and against any such debt, obligation or liability of such Covered Person or former Covered Person. The Company's obligation to indemnify and hold harmless set forth in this Section 5.3(g) shall include, without limitation, reasonable attorneys' fees and expenses incurred in defending against any claimant seeking to impose any such debt, obligation or liability.
- (h) No Covered Person shall be personally liable for the return of all or any part of a Member's Capital Contribution or payment of any amounts allocated to it, which return or payment shall be made solely from, and to the extent of, the Company's assets pursuant to the terms of this Agreement.

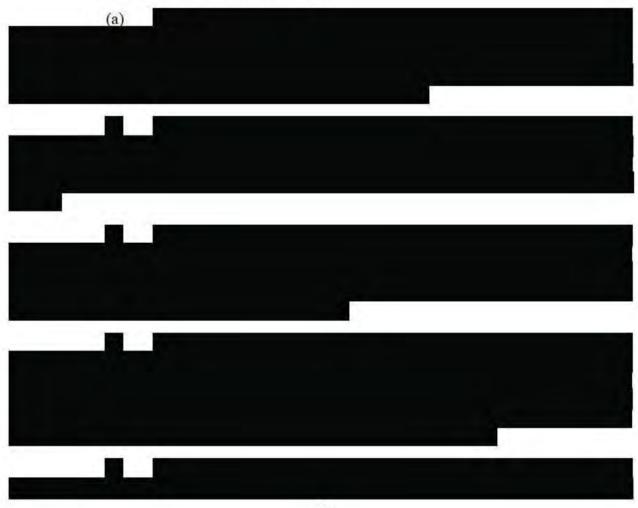
Section 5.4. Transactions with Affiliates.

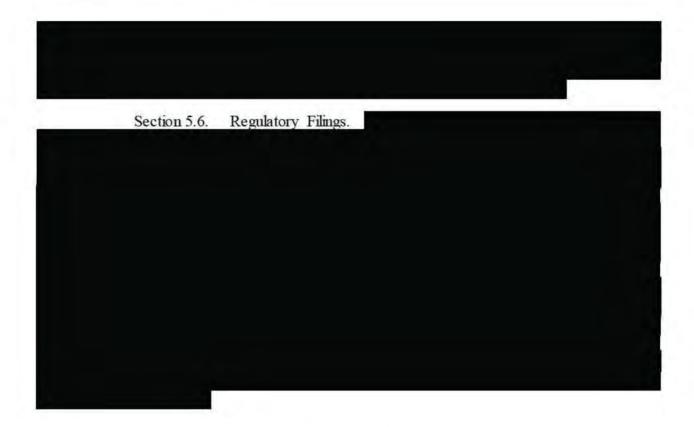
(a) Nothing in this Agreement shall preclude any transactions between the Company or its Subsidiaries and any Member or an Affiliate of any Member acting for its own account, so long as: (i) the Independent Manager and at least one Manager appointed by each

Founding Member votes in favor of such transaction (and approves any material amendments, modifications or waivers relating thereto); (ii) any services performed or products provided by such Member or such Affiliate are on terms no less favorable to the Company or its relevant Subsidiaries than those which would be available from an Unaffiliated Third Party; and (iii) in the reasonable belief of the Management Committee, such transaction is in the best interests of, the Company.

(b) Each Manager shall be entitled to be reimbursed for all reasonable out-ofpocket expenses, disbursements and advancements it pays or incurs in connection with the
business of the Company. The Independent Manager shall be entitled to receive commercially
reasonable compensation in an amount mutually determined by the Management Committee
(subject to Section 5.5(b)). The Independent Manager shall also be entitled to reimbursement for
all reasonable out-of-pocket expenses, disbursements and advancements paid or incurred by it in
connection with the business of the Company. Any other Manager who is not an employee of the
Company or any of its Subsidiaries shall be entitled to reimbursement for all reasonable out-ofpocket expenses, disbursements and advancements paid or incurred by such Manager in
connection with the business of the Company.

Section 5.5. Reserved Matters





ARTICLE VI

THE MANAGEMENT COMMITTEE OFFICERS; SUBCOMMITTEES

Section 6.1. Function of the Management Committee.

- (a) Generally. The Management Committee, composed of all the Managers then in office, is established to manage the business of the Company.
- (b) <u>Membership</u>. Managers shall be appointed or removed in accordance with the provisions of <u>Section 5.1</u>.
 - (c) Meetings and Approval Requirements.
 - (i) <u>Regular Meetings</u>. The Management Committee shall hold meetings at such times and places as are established by action of the Management Committee or by the written consent of each Manager. The Management Committee may adopt appropriate rules and regulations concerning the frequency and conduct of its meetings.
 - (ii) <u>Special Meetings</u>. A special meeting of the Management Committee shall be called by a resolution passed by the affirmative vote of a majority of the voting power of the Managers at the written request of at least two Managers then in office.

- (iii) <u>Telephonic Meetings</u>. Any meeting of the Management Committee may be held by conference telephone call or through similar communications equipment by means of which all Persons participating in the meeting can communicate with each other. Participation in a telephonic meeting held pursuant to this <u>Section 6.1(c)(iii)</u> shall constitute presence in person at such meeting.
- (iv) <u>Notices</u>. Notices of meetings of the Management Committee shall state the place, date and hour of the meeting and the purpose or purposes for which the meeting is called. Notices of meetings of the Management Committee shall be in writing and given by personal delivery, e-mail (with an non-automatically generated reply), or by overnight courier, not less than five nor more than twenty days before the date of the meeting. A Manager may waive in writing the requirements for notice before, at or after a special meeting, and attendance at such a meeting without objection by a Manager shall be deemed a waiver of such notice requirements.
- (v) Quorum. A majority of the Managers who are then in office, in each instance, present in person or by proxy, shall constitute a quorum of the Management Committee for purposes of conducting business. Notwithstanding the foregoing, so long as a Founding Member has the right to nominate and have appointed a Manager pursuant to Section 5.1(b), at least one Manager nominated by such Founding Member must be present to have a valid quorum and conduct business. In the event the Managers fail to achieve a quorum at a meeting scheduled in good faith by the Company due to the lack of presence of at least one Manager nominated by a Founding Member, such meeting shall be postponed by no less than two Business Days for two consecutive times with customary expedited notice. In the event at least one Manager nominated by such Founding Member fails to attend such rescheduled meetings, despite receiving at least two Business Days' notice of such rescheduled meetings, the presence of at least one Manager nominated by such Founding Member shall not be required to constitute a quorum for such rescheduled meeting.
- (vi) Approval Requirements. The Managers shall act only as a Management Committee and the individual Managers shall have no power in their individual capacity. Subject to Section 5.5 and Section 6.1(c)(vii), actions by the Management Committee shall require the affirmative vote of a majority of the voting power of the Managers present in person or by telephone, and voting at a duly held meeting of the Management Committee at which a quorum shall be present and acting throughout. With respect to all matters which may come before the Management Committee for decision, each Manager shall have one vote (or such greater number as is allocated to a Manager pursuant to Section 5.1(b)). Upon unanimous agreement of all Member Managers nominated by such Member and without the need for securing any proxy or similar instrument, any Member Managers present at a duly convened meeting of the Management Committee shall have the cumulative right to vote the number of votes held by all Member Managers nominated by such Member.
- (vii) Written Consents. Any action to be taken at any meeting of the Management Committee may be taken without a meeting if: (i) a written copy of such action to be approved is provided at least twenty-four hours in advance to each of the

Managers; (ii) each of the Managers is provided with a reasonable opportunity to review and discuss such action with the other Managers; and (iii) such consent is signed (including by way of electronic signature) by such of the Managers, including by proxy, as shall be required to authorize, approve, ratify or otherwise consent to such action under the Act and this Agreement. In the event such consent is signed by less than all of the Managers, a copy of such consent shall be sent promptly to each of the Managers who did not sign the consent. If any Member Manager executes a written consent, then all Member Managers nominated by the same Member shall be deemed to have executed such written consent. Action taken by written consent shall be effective according to its terms when the last required Manager signs the consent, unless the consent specifies a different effective date, in which event the action taken shall be effective as of the date specified in the consent. A Manager may withdraw a consent only by delivering a written notice of such withdrawal to the Company prior to the time that all required consents are in the possession of the Company. All consents executed in accordance with this Section 6.1(c)(vii) shall be included in the minutes or filed with the records of the Company.

- (d) <u>Delegation and Subcommittees</u>. The Management Committee shall have the power and authority to delegate to subcommittees of the Management Committee, and to one or more officers, agents or employees of the Company, as the Management Committee may deem appropriate from time to time. Notwithstanding the foregoing, for so long as a Founding Member has the right to nominate and have appointed a Manager pursuant to <u>Section 5.1(b)</u>, each subcommittee shall include at least one Member Manager nominated by such Founding Member. Any action, agreement, undertaking or authorization that is outside the ordinary course of business or that is material to the Company shall require the prior approval of the Management Committee.
- (e) <u>Third Party Reliance</u>. Third parties dealing with the Company shall be entitled to rely conclusively on the power and authority of the Management Committee and the Officers as set forth in this Agreement.
- (f) <u>Consent of the Series A Preferred Members</u>. For so long as any Series A Preferred Units remain outstanding, without the prior written consent of each of the Series A Preferred Members, the Company shall not, and shall cause its Subsidiaries not to:
- (i) amend, change, waive or alter this Agreement in a manner that materially and adversely affects any terms specifically applicable to the Preferred Units, including any adverse amendment, change, waiver or other alteration to the following Sections applicable to the Preferred Units: Section 3.4 (Rights of the Series A Preferred Members), Section 4.1 (Distributions) and Section 10.3 (Liquidation); or
- (ii) amend, change, waive or alter the Company's Certificate of Formation in a manner that adversely changes the preference or priority of the Preferred Units.

Section 6.2. Officers.

(a) <u>Appointment of Officers</u>. The Officers may include a Chairman, a Secretary, and such other officers as the Management Committee shall approve from time to time in its sole discretion. Any two or more offices may be held by the same Person.

- (b) <u>Election; Term.</u> Officers shall be elected at such time or times as the Management Committee shall determine. Officers shall hold office, unless removed, until their successors are elected.
- be delegated to them from time to time by the Management Committee. The Officers shall have the authority to manage the day-to-day affairs of the Company under the supervision of the Management Committee and shall act at all times in accordance with the instructions of the Management Committee. The acts of the Officers shall bind the Company and its Members to the extent that such acts are within the scope of their authority delegated to them. The Officers shall be subject at all times to the direction of the Management Committee, and shall keep the Management Committee informed as to material matters concerning the Company. The Chairman, if he or she is present, shall be chairman of all meetings of the Management Committee, as well as any subcommittee of which he or she is a member. No Officer shall perform any act in knowing contravention of this Agreement, any material loan documents governing the assets or the Company or any of its Subsidiaries, or in violation of law or any governmental regulation.
- (d) Removal, Resignation and Filling of Vacancy of Officers. Subject to any restrictions set forth in the employment agreements of the Officers, the Management Committee may remove any Officers with or without cause at any time. Any Officer may resign at any time by giving written notice to the Management Committee. Any such resignation shall take effect at the date of the receipt of that notice or at such later effective time as may be specified in such notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. The Management Committee may fill any vacancy created by any such removal or resignation pursuant to the approval provisions set forth in Section 5.1(a).
- (e) <u>Salaries of Officers</u>. The salaries of all Officers employed by the Company shall be fixed by a resolution of the Management Committee or pursuant to a written employment agreement approved by the Management Committee.
- (f) <u>Duties of Officers</u>. Each Officer that is an officer or employee of CBB shall have the same duties, including fiduciary duties, and obligations as apply to officers of CBB. The duties, including fiduciary duties, of all other Officers shall be subject to Section 11.16.

ARTICLE VII

ACCOUNTING AND RECORDS; TAX MATTERS

- Section 7.1. <u>Books and Records</u>. The Management Committee shall cause to be maintained at the Company's principal place of business:
- (a) books and accounts of the Company, which shall be maintained in accordance with generally accepted accounting principles in the United States of America consistently applied; and

(b) all other records necessary, convenient, or incidental to the business of the Company as provided for in this Agreement.

For U.S. federal income tax purposes, the books and accounts of the Company shall be maintained on the accrual method of accounting.

Section 7.2. Reports; Tax Returns.

- (a) The Company shall perform or cause to be performed an annual review of the books and accounts of the Company and its Subsidiaries as of the end of each Fiscal Year. The Company shall prepare or cause to be prepared all income and other tax returns of the Company and its Subsidiaries and shall cause the same to be filed in a timely manner (including extensions). In addition, the Company shall be entitled to take any other action required to cause the Company and its Subsidiaries to be in compliance with any applicable governmental regulations.
- (b) Following a Member's written request, the Management Committee shall use commercially reasonable efforts to promptly furnish to such Member any information and documentation (including receipts or other proofs of payment of taxes) which is in the Company's possession (or in the possession of a Subsidiary), or which the Management Committee can obtain with the use of commercially reasonable efforts (including information of any Subsidiary), and which is reasonably required by such Member to comply in a timely manner with any U.S. federal, state or local tax filing or reporting requirements in respect of the Company.
- Section 7.3. <u>U.S. Federal Tax Elections</u>. In the sole discretion of the Management Committee, the Company may make any and all elections provided for under the Code or applicable tax law of any state, local or non-U.S. jurisdiction. Each Member agrees that the Company shall elect as of its formation to be, and is to be treated at all times as, an association taxable as a corporation for U.S. federal income tax purposes as provided in Treasury Regulations Section 7701. The Company's books of account shall be maintained on a basis consistent with such treatment. No Member shall take a position inconsistent with such treatment on any tax return of such Member. The Management Committee shall be authorized to take, and shall take, all reasonable action, including the execution of other documents, as may reasonably be required in order for the Company to be treated as an association taxable as a corporation for U.S. federal income tax purposes as provided in Treasury Regulations Section 7701.
- Section 7.4. <u>Tax Forms</u>. If requested by the Management Committee, each Member shall deliver to the Management Committee: (A) an affidavit in form satisfactory to the Management Committee that the applicable Member (or its direct or indirect partners, members, shareholders and/or beneficial owners, as the case may be) is not subject to withholding under the provisions of any U.S. federal, state, local, or non-U.S. law; (B) any certificate, form or other document that the Management Committee may reasonably request with respect to any such laws; (C) any information or documentation prescribed under FATCA or as may be necessary for the Company to comply with its obligations, or to avoid withholding, under FATCA; and/or (D) any other form or instrument reasonably requested by the Management Committee relating to any Member's (or its direct or indirect partners', members', shareholders' and/or beneficial owners') status under such law; and/or (E) any other information necessary or reasonably prudent to enable the Company to comply with any provisions of the Code.

Section 7.5. Information Rights.

- (a) Each Member (other than the Incentive Member) holding more than a 5% Percentage Interest and each Founding Member shall have the right:
- (i) to receive no later than 45 days after the end of each month, monthly management report containing monthly financial statements (including an income statement and balance sheet) of the Company and its Subsidiaries, setting out key performance indicators or other performance metrics and commentary on the performance of the Company certified by an officer of the Company, and prepared in accordance with GAAP, subject to normal year-end adjustments and the absence of footnotes;
- (ii) to receive no later than 45 days after the end of each fiscal quarter, quarterly financial statements (including an income statement and balance sheet) of the Company and its Subsidiaries certified by an officer of the Company, and prepared in accordance with GAAP, subject to normal year-end adjustments and the absence of footnotes;
- (iii) to receive no later than 105 days after the end of each Fiscal Year, annual financial statements (including an income statement, balance sheet, and statement of limited partner's equity) of the Company and its Subsidiaries of audited by an independent accounting firm, and prepared in accordance with GAAP; and
- (iv) subject to any legal and contractual obligations of the Company and its Subsidiaries, to ask questions of the Officers of the Company and its Subsidiaries regarding the operations of the Company and any Subsidiary, and to receive any such other information regarding the Company or its Subsidiaries as may be reasonably requested by the Members.
- (b) Without limiting Section 7.5(a), the Founding Members shall have the right to receive any reports that the Company or its Subsidiaries provides to their respective lenders.

ARTICLE VIII

TRANSFERS

Section 8.1. Restrictions.

- (a) No Member shall, voluntarily or involuntarily or by operation of law, directly or indirectly, sell, assign, donate, gift, pledge, hypothecate, dispose of, purchase or grant any right or option with respect to, encumber or grant a security interest in, assign or grant a participation or beneficial interest in, or in any other manner, transfer any Units, in whole or in part, or any other right or interest in any Units, or enter into any transaction which results in the economic equivalent of a transfer to any Person, including any derivative transaction that has the effect of changing materially the economic benefits and risks of ownership (each such action, a "Transfer") except pursuant to a Permitted Transfer.
- (b) Any attempt to Transfer any Unit which is not in accordance with this Agreement shall be null and void. The Company agrees that it will not cause, permit or give any -23-

effect to any Transfer of any Unit to be made on its books and records unless such Transfer is permitted by this Agreement and has been made in accordance with the terms of this Agreement.

- (c) Each Member will not effect any Transfer unless such Transfer is a Permitted Transfer and is made: (i) pursuant to an effective registration statement under the Securities Acts or pursuant to an exemption from the registration requirements under the Securities Acts; and (ii) in accordance with all Applicable Law (including all securities laws).
- (d) Unless such Member (and/or such Permitted Transferee) first complies with the applicable provisions of this Agreement, no Member (and no Permitted Transferee of any Member) shall directly or indirectly: (i) permit the Transfer of all or any portion of the direct or indirect equity or beneficial interest in such Member (and/or such Permitted Transferee) or (ii) otherwise seek to avoid the provisions of this Agreement by transferring, issuing, or permitting the Transfer or issuance of, any direct or indirect equity or beneficial interest in such Member (and/or such Permitted Transferee), in any such case in a manner which fails to comply with the provisions of this Agreement applicable to such Member (and/or such Permitted Transferee). Notwithstanding the foregoing, the covenant set forth in this Section 8.1(d) shall not restrict any Permitted Transfer or any direct or indirect transfer by any Member or its Affiliates of any limited partnership interest of, or any equivalent investment in, any investment fund or in the case of the REST Member, to a professional custodian, trustee or similar nominee holding on behalf and for the benefit of the REST Member, in each case, constituting a Qualifying Related Party.
- (e) In any sale for which a Member has tag-along rights pursuant to Section 8.4 or is in respect of a Drag-Along Process, the Company and its officers and Managers shall cooperate and take all actions reasonably necessary or reasonably requested by the Tag-Along Member or Dragging Member, as applicable, to effectively conduct the sale process and assure the success of such sale. Without limitation, such cooperation and actions shall include: (A) identifying and soliciting prospective purchasers (including securing the services of an investment bank and/or other professional advisors, selected by the Tag-Along Member, to assist in procuring such purchasers); (B) preparing and delivering preliminary marketing and auction materials; (C) preparing or assisting in the preparation of due diligence materials; (D) making such due diligence materials available to prospective purchasers; (E) providing access to the Company's and its Subsidiaries' books, records, properties and other proprietary materials (subject, in each case, to the execution of customary confidentiality and non-disclosure agreements) to prospective purchasers; and (F) making the Managers, officers and employees available to prospective purchasers for presentations and due diligence interviews.

(f) [Reserved.]

(g) In any sale of all or substantially all of the equity interests of the Company or any class of Units, the Proceeds of such sale shall be allocated among the Members by applying the value of the Company implied by the aggregate purchase price in such sale as the total liquidation value of the Units outstanding immediately prior to such sale of the Company, and allocating such liquidation value among the Units as determined in accordance with Section 10.3 in good faith by the Management Committee in its sole and absolute discretion (it being understood and agreed that, for purposes of such sale of the Company, unvested Units, if any, that have not been forfeited or repurchased prior to such time shall not participate).

- Section 8.2. <u>Permitted Transfers</u>. (a) Notwithstanding anything to the contrary contained in this Agreement, and subject to <u>Section 8.1</u>, <u>Section 8.2(b)</u>, and <u>Section 8.7</u>, a Member may at any time effect any of the following Transfers (each a "<u>Permitted Transfer</u>", and each transferee of such Member in respect of such Transfer, a "<u>Permitted Transferee</u>"):
 - (i) any Transfer of any or all Units held by a Member to a Qualifying Related Party of such Member;
 - (ii) any Transfer of any or all Units made by any Member to an Unaffiliated Third Party who is a Qualifiable Transferee in compliance with <u>Section 8.3</u> and (if applicable) subject to Section 8.4;
 - (iii) any Transfer of any or all Units made by any Member to an Unaffiliated Third Party who is a Qualifiable Transferee in compliance with <u>Section 8.5</u>;
 - (iv) any Transfer of Units pursuant to the exercise of the Company's rights under Section 8.6; and
 - (v) any indirect Transfer by a Founding Member so long as after giving *pro forma* effect to such indirect Transfer, such Founding Member remains a MIP Related Party, a REST Related Party, or an Ares Related Party (as applicable).
- (b) In any direct Transfer of Units referred to above in Section 8.2(a), the Permitted Transferee shall agree in writing to be bound by all the provisions of this Agreement. As a condition to such Transfer, a Permitted Transferee shall execute and deliver to the Company a copy of an executed joinder agreement with respect to this Agreement in the form attached to this Agreement as Exhibit C. Each Permitted Transferee that directly holds Units shall hold such Units subject to the provisions of this Agreement as a "Member" under this Agreement as if such Permitted Transferee were an original signatory to this Agreement and shall be deemed to be a Party. Promptly following any such Transfer, the applicable schedules, annexes and exhibits to this Agreement shall be revised to include all applicable information for such Member.

Section 8.3. Right of First Offer.

- (a) Subject to <u>Section 8.1</u> and whether by way of purchase agreement, tender offer, merger, consolidation, business combination or other similar transaction, and whether on its own initiative or in response to a bona fide offer, if, at any time, any Member proposes to Transfer in a bona fide arms' length transaction or series of related transactions all or any portion of the Units held by such Member to one or more Unaffiliated Third Parties (other than a Permitted Transfer made pursuant to Section 8.2(a)(iii)), then such Member shall first provide to each other Member (other than any Incentive Member) the opportunity to make an offer to purchase the Units proposed to be Transferred (the "ROFO Units") in accordance with this <u>Section 8.3</u>. Each Member proposing to Transfer Units under this <u>Section 8.3</u> is a "<u>ROFO Seller</u>," and each Member having a right of first offer with respect to the ROFO Units under this <u>Section 8.3</u> is a "<u>ROFO Member</u>."
- (b) The ROFO Seller shall deliver a written notice (the "<u>ROFO Sale Notice</u>") of such proposed Transfer to each ROFO Member. The ROFO Sales Notice shall state: (i) the

ROFO Seller's intention to Transfer the ROFO Units in a bona fide arms' length transaction or series of related transactions; and (ii) specify the number of ROFO Units proposed to be Transferred and other terms and conditions that may be reasonably expected to have a material impact on the value of the Transfer. Each ROFO Member shall have until thirty days after receipt of the ROFO Sale Notice (the "ROFO Exercise Period") to provide to the ROFO Seller a written offer to purchase (or to cause its Qualifying Related Party to purchase) all, but not less than all of the ROFO Units (the "ROFO Offer"). Each ROFO Offer shall: (i) set forth the proposed upfront cash purchase price ("ROFO Offer Price") and all other material terms and conditions pursuant to which the ROFO Member (or its Qualifying Related Party) is willing to purchase the ROFO Units, including the date on which such ROFO Member proposes to consummate such Transfer, which may be a specified number of days after the satisfaction of all of the conditions to such Transfer; and (ii) shall be irrevocable during the ten day period after receipt by the ROFO Seller of such ROFO Offer (the "ROFO Acceptance Period"). With respect to each ROFO Sale Notice, each ROFO Member that has not delivered a ROFO Offer within the ROFO Exercise Period shall be deemed to have waived all of its rights under this Section 8.3 with respect to the proposed Transfer described in the ROFO Sale Notice (but not any subsequent proposed Transfers).

- (c) If any of the ROFO Members delivers a ROFO Offer pursuant to and in accordance with Section 8.3(b) within the ROFO Exercise Period, then the ROFO Seller may accept or reject, in its sole discretion for any or no reason, the ROFO Offer representing the highest ROFO Offer Price within the ROFO Acceptance Period. If the ROFO Seller does not accept, or fails to respond to, any ROFO Offer within the ROFO Acceptance Period, then it shall be deemed to have rejected such ROFO Offer. If the ROFO Seller accepts a ROFO Offer pursuant to and in accordance with this Section 8.3(c), then the ROFO Seller and the ROFO Member that made such ROFO Offer shall work in good faith to execute definitive documentation to effectuate such Transfer on the same terms and conditions as set forth in the ROFO Offer within thirty days from the date of acceptance of the ROFO Offer.
- (d) If (i) no ROFO Member delivers a ROFO Offer pursuant to and in accordance with Section 8.3(b) within the ROFO Exercise Period or (ii) the ROFO Seller rejects all of the ROFO Offers, then the ROFO Seller may Transfer all (but not less than all) of the ROFO Units to any applicable Qualifiable Transferee with respect to such ROFO Seller as provided in Section 8.3(a) so long as the definitive documentation to effectuate such Transfer is executed within twelve months after the expiration of the ROFO Exercise Period. Solely in the case of clause (ii) of this Section 8.3(d), the purchase price of such Transfer must be higher than the highest ROFO Offer Price of the ROFO Offers that were rejected (or deemed rejected). If the ROFO Seller does not execute definitive documentation to effectuate the Transfer within such twelve-month period, then the ROFO Units shall not be offered to any other Person unless first offered to the ROFO Members again pursuant to and in accordance with the provisions of this Section 8.3.
- (e) In connection with any Transfer by a ROFO Seller to any ROFO Member pursuant to and in accordance with this <u>Section 8.3</u>, each Member shall take all actions necessary or appropriate to consummate such Transfer, entering into agreements and delivering certificates and instruments and consents as may be deemed necessary or appropriate in furtherance of such Transfer.

Section 8.4. <u>Tag-Along Rights</u>.

- (a) Subject to and following the application of the procedures set forth in Section 8.3, if any Member or group of Members (the "Tag-Along Member") proposes to effect a Transfer of Units to one or more Unaffiliated Third Parties (the "Tag-Along Buyer") (other than a Permitted Transfer made pursuant to Section 8.2(a)(iii))) (a "Tag-Along Sale"), the Tag-Along Member shall promptly give written notice (the "Transfer Notice") to the other Members at least ten Business Days prior to the closing of such Tag-Along Sale. The Transfer Notice shall describe in reasonable detail the proposed Tag-Along Sale, including the class and number of Units to be sold, the identity of the prospective transferee(s), the purchase price of each such Unit to be sold and the date such proposed Tag-Along Sale is expected to be consummated.
- Each other Member shall have the right, exercisable upon delivery of an irrevocable written notice to the Tag-Along Member within ten Business Days after the date of the Transfer Notice (the "Response Deadline"), to participate in such proposed Tag-Along Sale on the same terms and conditions as set forth in the Transfer Notice by Transferring the same proportion of their units as the Tag-Along Member of its Units to the Tag-Along Buyer on the same terms and conditions. Such terms and conditions shall include: (i) each Participant (as hereafter defined) being solely liable for Fundamental Representations made by it in respect of itself and no Participant being required to make any representation and warranty with respect to the Tag-Along Member or any other Participant; (ii) each Participant being proportionately liable representations, warranties, and covenants made by or in respect of the Company and its Subsidiaries with all other Participants; and (iii) the granting of all indemnifications, and similar agreements and arrangements agreed to by the Tag-Along Member; provided that in no event shall a Participant be required to assume liability for its breach of representations and warranties made to the Tag-Along Buyer in excess of the Proceeds received by it with respect to its Transferred Units. Each Member electing to participate in the Tag-Along Sale (a "Participant") shall indicate such participation in its irrevocable notice of election to the Tag-Along Member. Any general indemnity given by the Tag-Along Member and the Participants applicable to liabilities not specific to the Tag-Along Member or a particular Participant to the Tag-Along Buyer in connection with such Transfer shall be apportioned among the Tag-Along Member and each Participant on a pro rata basis according to the consideration received by the Tag-Along Member and such Participants in connection with such Transfer. No Participant shall have liability with respect to such general indemnity in excess of the aggregate Proceeds received by it in connection with such Transfer. Notwithstanding the other provisions of this Section 8.4(b), in connection with such a Transfer, no Participant shall have liability to the extent of any fraud by such Tag-Along Member or any other Participant (except to the extent fully indemnified by such Tag-Along Member and the other Participants).
- (c) Each Participant shall effect its participation in the Transfer by delivering to the Tag-Along Member (to hold in trust as agent for such Participant), at least two Business Days prior to the date scheduled for the consummation of the Tag-Along Sale: (i) one or more certificates or other instruments, as applicable, in proper form for transfer, which represent the number of vested Units which such Participant is entitled to Transfer in accordance with Section 8.4(b); (ii) executed copies of a joinder or other similar agreement pursuant to which such Participant shall agree to be bound by the terms and conditions of the transactions described in the

Transfer Notice pursuant to <u>Section 8.4(a)</u> in form and substance reasonably satisfactory to the Tag-Along Member; and (iii) executed copies (or signature pages to such copies) of such other commercially reasonable agreements, documents or certificates as the Tag-Along Member and/or the Tag-Along Buyer shall reasonably request in order to effect such Transfer in accordance with the terms set forth in this <u>Section 8.4</u>. Such agreements, documents, certificates or other instruments, as applicable, shall be delivered by the Tag-Along Member to the Tag-Along Buyer on the date scheduled for the Tag-Along Sale in consummation of the Tag-Along Sale pursuant to the terms and conditions specified in the Transfer Notice, and the Tag-Along Buyer shall remit to each such Participant its ratable portion of the net sale Proceeds. Other than any transaction costs and expenses, the Tag-Along Member's sale of Units in any Tag-Along Sale shall be effected on the same terms and conditions as those set forth in such Transfer Notice and those applicable to the other Participants.

(d) Notwithstanding anything contained in this <u>Section 8.4</u> to the contrary, so long as the Tag-Along Member has complied with its obligations pursuant to <u>Section 8.4</u>, the Tag-Along Member (or any of its Affiliates) shall have no liability to any Participant in the event no Units are sold except that the Tag-Along Member and each Participant shall share in the fees, costs and expenses pro rata in accordance with their respective proportions of the total number of Units that were proposed to be transferred to the Tag-Along Buyer.

Section 8.5. <u>Drag-Along Rights</u>.

- At the written request of one or more Members having an aggregate Percentage Interest in excess of 50% (the "Dragging Member"), each other Member (a "Dragged Member") agrees to consent to, and raise no objection to, a Drag Event. Each Dragged Member shall also take all other actions necessary or reasonably required to cause the consummation of such Drag Event on the terms proposed by the Dragging Member. The Parties acknowledge and agree that the Dragging Member shall control all decisions in connection with such Drag Event (including the hiring or termination of any investment bank or professional advisor). Without limiting the foregoing, each Dragged Member shall: (i) vote, or cause to be voted, all of its Units over which such Dragged Member has the power to vote or direct the voting and which are entitled to vote on such Drag Event at a special or annual meeting of Members or by written consent in lieu of a meeting in favor of such Drag Event; (ii) irrevocably waive any dissenter's rights, appraisal rights or similar rights (including any notice in connection with such dissenter's rights, appraisal rights or similar rights) which such Dragged Member may be entitled under Applicable Law in connection with such Drag Event (and each such Dragged Member irrevocably waives all such rights, including the receipt of notice); (iii) sell its respective ratable portion of its Units to be Transferred by such Drag Event; and (iv) direct any of its representatives on the Management Committee to vote in favor of such Drag Event.
- (b) The Dragging Member shall exercise the rights provided to it under this Section 8.5 (the "Drag-Along Rights") by delivery of a written notice to the Company and the Dragged Member at least ten Business Days prior to the proposed closing of such Drag Event. The Company and the Dragged Member each agree to cooperate with the Dragging Member and the purchaser in any such Drag Event process (the "Drag-Along Process"). Such cooperation shall include: (i) waiving any appraisal rights (and notice in respect of such appraisal rights) to which the Dragged Member may be entitled under Applicable Law and the Dragged Member waives all

such appraisal rights (and notice in respect of such appraisal rights); (ii) entering into reasonable and customary agreements with respect to the potential Drag Event); and (iii) executing and delivering all commercially reasonable documents (including purchase agreements) and instruments as the Dragging Member and such purchaser request to effect such Drag Event including the making of all representations, warranties and covenants and the granting of all indemnifications. Notwithstanding the foregoing, the liability with respect to such indemnifications of the Dragged Member shall be limited to the Proceeds received by it and the agreements and arrangements shall be no more onerous than those agreed to by the Dragging Member (including participating in any escrow arrangements). The Dragging Member agrees that upon such Drag Event the Dragged Member shall receive its ratable portion of the Proceeds, and, unless otherwise agreed by the Dragged Member, such sale shall be on substantially the same terms and conditions as afforded to the Dragging Member. Notwithstanding the other provisions of this Section 8.5(b), in connection with such a Transfer: (i) each Dragged Member shall be solely liable for Fundamental Representations made by it in respect of itself and no Dragged Member shall be required to make any representation and warranty with respect to the Dragging Member or any other Dragged Member; (ii) each Dragged Member shall be proportionately liable for representations, warranties, and covenants made by or in respect of the Company and its Subsidiaries with all other Members in accordance with their respective Percentage Interests; and (iii) no Founding Member shall be required to enter into or be bound by any non-competition or any other non-financial or restrictive covenant with respect to itself or its Related Parties; provided that in no event shall a Dragged Member be required to assume liability for its breach of representations and warranties made pursuant to a Drag Event in excess of the Proceeds received by it.

(c) For the avoidance of doubt, each Member shall be entitled to receive the same type or types of consideration payable to any Member in connection with such Drag Event (including without limitation the right to election among consideration which may include equity interests in the purchaser of the Company).

Section 8.6. Company's Right to Purchase Upon Involuntary Transfer. In the event of any Involuntary Transfer of Units, the Company shall have the right to purchase such Units pursuant to this Section 8.6. On the Involuntary Transfer of any Units of any Member or other holder, as the case may be, such holder shall promptly (but in no event later than two Business Days after such Involuntary Transfer) furnish written notice to the Company indicating that the Involuntary Transfer has occurred. The written notice shall: (i) specify the name of the Person to whom such Units have been Transferred (the "Involuntary Transferee"); and (ii) give a detailed description of the circumstances giving rise to, and stating the legal basis for, the Involuntary Transfer. Upon the receipt of such notice, and for ninety days following such receipt (or at any time if such notice has not been given), the Company shall have the right to purchase, and the Involuntary Transferee shall have the obligation to sell, all or any portion of the Units acquired by the Involuntary Transferee for a purchase price equal to the Unit FMV of such Units on the date of Transfer to the Involuntary Transferee. During such ninety day period, such Involuntary Transferee shall not have any governance or Transfer rights under this Agreement.

Section 8.7. <u>Transfer Documentation</u>. Without limiting the foregoing provisions of this <u>Article VIII</u>, the Management Committee shall admit a direct transferee of a Member's

Membership Interest to the Company only if such transferee has: (A) agreed in writing to be bound by the terms of this Agreement by becoming a Party, including by delivering a joinder in the form attached to this Agreement as Exhibit C; and (B) delivered such additional documentation as the Management Committee shall reasonably require to so admit such transferee to the Company. Notwithstanding anything contained in this Agreement to the contrary, both the Company and the Management Committee shall be entitled to treat the transferor of a Membership Interest as the absolute owner of such Membership Interest in all respects, and shall incur no liability for distributions of cash or other property made to it, until such time as a written assignment or other evidence of the consummation of a Transfer that conforms to the requirements of this Article VIII and is reasonably satisfactory to the Management Committee has been received by the Company. The effective date of any Transfer permitted under this Agreement shall be the close of the Business Day on the day of receipt of such written assignment or other evidence of the consummation of a Transfer by the Company.

ARTICLE IX

INITIAL PUBLIC OFFERING; REGISTRATION RIGHTS

Section 9.1. <u>Initial Public Offering</u>. Subject to <u>Section 5.5</u>, the Management Committee shall have the right to cause the Company, CBB, or any entity owned by the Company which owns, directly or indirectly, CBB to consummate an Initial Public Offering which results in the common stock of such entity being listed for trading on the New York Stock Exchange, the NASDAQ Global Market or the NASDAQ Global Select Market.

Section 9.2. Registration Rights. Upon the occurrence of the Initial Public Offering, the Company or its successor shall, or shall cause the issuer of the common stock to enter into a registration rights agreement with the Founding Members on substantially the terms and conditions set forth in Exhibit I. Among other things, unless the Founding Members otherwise agree, the registration rights agreement shall provide that: (i) Members owning in the aggregate at least a 30% Percentage Interest immediately prior to such Public Offering shall have three demand registration rights for Form S-1 (or successor form) and unlimited demand registration rights if the issuer is eligible for Form S-3 (or successor form), and unlimited piggy-back registration rights, in each case for and on behalf of itself and its Permitted Transferees; (ii) in the context of demand registration rights involving a registration statement on Form S-3 for sales on a delayed or continuous basis under Rule 415 under the Securities Act of 1933, as amended, 15 U.S.C. § 15b et seq. (the "Securities Act"), the reference in clause (i) to "30%" shall be replaced with "5%"; and (iii) all other Members shall have unlimited piggy-back registration rights.

Section 9.3. <u>Corporate Restructuring</u>. In connection with any Initial Public Offering of the Company or any Subsidiary of the Company, the Management Committee and the Members shall, if required by Exhibit I, effect a corporate restructuring in accordance with Exhibit I.

ARTICLE X

DISSOLUTION, LIQUIDATION AND TERMINATION OF THE COMPANY

Section 10.1. <u>Limitations</u>. The Company may be dissolved, liquidated and terminated pursuant to and only pursuant to the provisions of this <u>Article XI</u>. The Parties irrevocably waive any and all other rights they may have to cause a dissolution of the Company or a sale or partition of any or all of the Company's assets.

Section 10.2. <u>Exclusive Causes</u>. The Company shall be dissolved, and liquidated pursuant to <u>Section 10.3</u>, upon the earliest to occur of (it being understood that the following events are the only events that can cause the dissolution and liquidation of the Company):

- (a) approval by the Management Committee so to dissolve, liquidate and terminate the Company; or
- (b) the entry of a decree of judicial dissolution pursuant to Section 18-802 of the Act; or
 - (c) pursuant to Article II.

Section 10.3. <u>Liquidation</u>. In all cases of dissolution of the Company, the business of the Company shall be continued to the extent necessary to allow an orderly winding up of its affairs, including the liquidation of the assets of the Company pursuant to the provisions of this <u>Section 10.3</u>, as promptly as practicable following such dissolution, and each of the following shall be accomplished:

- (a) The Management Committee shall cause to be prepared a statement setting forth the assets and liabilities of the Company as of the date of dissolution, a copy of which statement shall be furnished to all of the Members.
- (b) The property of the Company shall be liquidated or distributed in kind by the Management Committee as promptly as possible, but in an orderly, businesslike and commercially reasonable manner. In the exercise of its business judgment and if commercially reasonable, the Management Committee may determine: (i) to sell all or any portion of the property of the Company to a Member so long as the purchase price is not less than the fair market value of such property, or to any other Person; or (ii) not to sell all or any portion of the property of the Company, in which event such property and assets shall be distributed in kind pursuant to Section 10.3(c).
- (c) The Proceeds of sale and all other assets of the Company shall be applied and distributed as follows and in the following order of priority:
 - (i) to the payment of the debts and liabilities of the Company and the expenses of liquidation or distribution;
 - (ii) to the setting up of any reserves which the Management Committee shall determine to be reasonably necessary for contingent, unliquidated or unforeseen liabilities

or obligations of the Company or the Members arising out of or in connection with the Company. In the discretion of the Management Committee, such reserves may be held by the Management Committee or paid over to a bank or trust company selected by it, in either case to be held by the Management Committee or such bank or trust company as escrow holder or liquidating trustee for the purposes of disbursing such reserves to satisfy the liabilities and obligations described above. Such reserves shall be held for such period as the Management Committee shall deem advisable, and upon the expiration of such period, any remaining balance shall be distributed as provided in clauses (iii) and (iv);

- (iii) to pay the Series A Preferred Members before any distributions are made to Members holding of Common Units an amount equal to the greater of (A) Series A Preferred Unit Accumulated Value and (B) the amount such Series A Preferred Units would be entitled to receive if such Series A Preferred Units were converted into Common Units as of the date of the relevant liquidation; and
- (iv) finally, the balance to the Common Members pro rata in accordance with their respective Common Percentage Interests;

<u>provided</u>, that if any such distribution to Members pursuant to clauses (iii) and (iv) would result in more than a Minimum Return, then the Incentive Percentage of any distribution in excess of such Minimum Return shall be allocated pro rata to the Incentive Units.

Section 10.4. <u>Continuation of the Company</u>. Notwithstanding anything to the contrary contained in this Agreement, the death, retirement, resignation, expulsion, bankruptcy, dissolution or removal of a Member shall not cause the dissolution of the Company. In such event, the Members are expressly authorized to continue the business of the Company without any further action on the part of the Members.

ARTICLE XI

MISCELLANEOUS

Section 11.1. <u>Binding Effect</u>. Except as otherwise provided in this Agreement, every covenant, term and provision of this Agreement shall be binding upon and inure to the benefit of the Company, Members and their respective heirs, legatees, legal representatives, successors, transferees and permitted assigns.

Section 11.2. <u>Notices</u>. Any and all notices, demands, consents, approvals, requests or other communications (collectively, "<u>Notices</u>") which any Member or the Company, as applicable, may desire or be required to give under this Agreement shall be by personal delivery, e-mail (with an non-automatically generated reply), or by overnight courier to the Members and/or the Company, as applicable, at, in the case of the Members, their addresses referred to in <u>Exhibit</u> A or such other address as a Member may from time to time designate to the others, and:

In the case of the Company, as follows:

c/o Macquarie Infrastructure and Real Assets, Inc.

125 W. 55th Street

New York, New York 10019

Attn: Anton Moldan

Email: Anton.Moldan@macquarie.com

MIRAlegalnotices@macquarie.com

with a copy, which shall not constitute notice, to:

White & Case LLP

1221 Avenue of the Americas

New York, New York 10020

Attn: Jason Webber, Esq.

Luke Laumann, Esq.

Email: jwebber@whitecase.com

luke.laumann@whitecase.com

In the case of the MIP Member, as follows:

MIP V RF Partners L.P.

c/o Macquarie Infrastructure and Real Assets, Inc.

125 W. 55th Street

New York, New York 10019

Attn: Anton Moldan

Email: Anton.Moldan@macquarie.com

MIRAlegalnotices@macquarie.com

With a copy, which shall not constitute notice, to:

White & Case LLP

1221 Avenue of the Americas

New York, New York 10020

Attn: Jason Webber, Esq.

Luke Laumann, Esq.

Email: jwebber@whitecase.com

luke.laumann@whitecase.com

In the case of the Ares Member, as follows:

Ares RF Holdings L.P.

c/o Ares Management LLC

2000 Avenue of the Stars

12th Floor

Los Angeles, California 90067

Attn: PE General Counsel

Email: PEGeneralCounsel@aresmgmt.com

fbernshteyn@aresmgmt.com bfriedman@aresmgmt.com

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with a copy, which shall not constitute notice, to:

Sullivan & Cromwell LLP 1888 Century Park East 21st Floor Los Angeles, California 90067 Attn: Alison S. Ressler, Esq. Rita-Anne O'Neill, Esq. Email: resslera@sullcrom.com oneillr@sullcrom.com

In the case of the REST Member, as follows:

Attn: Company Secretariat
REST Nominees No. 2 Pty Ltd
As trustee of the REST US Infrastructure No. 2 Trust
Level 5, 321 Kent Street
Sydney, NSW, 2000 Australia
Email: Infrastructure.Reporting@superinvestment.com.au;
notices@superinvestment.com.au; companysecretariat@rest.com.au

Any Member or the Company may designate another address or change its address for Notices under this Agreement by a Notice given pursuant to this <u>Section 11.2</u>. A Notice sent in compliance with the provisions of this <u>Section 11.2</u> shall be deemed delivered when actually received by the party to whom it is sent.

Section 11.3. Entire Agreement; No Assignment. This Agreement constitutes the entire agreement among the Parties pertaining to the subject matter of this Agreement, and fully supersedes any and all prior agreements or understandings between the Parties pertaining to the subject matter of this Agreement. Neither this Agreement, nor the rights, interests or obligations under this Agreement shall be assigned by any of the Parties without the prior written consent of the other Parties.

Section 11.4. <u>Section Headings</u>. The section headings used in this Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of any of the provisions of this Agreement.

Section 11.5. <u>Counterparts</u>. This Agreement may be executed in several counterparts (including by means of facsimile or electronically transmitted scanned signature pages) and all such executed counterparts shall constitute a single agreement, binding on all of the Parties, their successors and their assigns, notwithstanding that all of the Parties are not signatories to the original or to the same counterpart.

Section 11.6. <u>Severability</u>. In case any one or more of the provisions contained in this Agreement shall be invalid or unenforceable in any jurisdiction, the validity and enforceability of all remaining provisions contained in this Agreement shall not in any way be affected or impaired by such invalidity or unenforceability, and the invalid or unenforceable provisions shall be interpreted and applied so as to produce as near as may be the economic result intended by the Members.

Section 11.7. <u>Governing Law</u>. This Agreement, including its existence, validity, construction and operating effect, and the rights of each of the Parties, shall be governed by and construed in accordance with the laws of the State of Delaware without regard to principles of conflict of laws.

Section 11.8. Submission to Jurisdiction; Waiver of Jury Trial.

- Each of the Parties irrevocably acknowledges and consents that any legal action or proceeding brought with respect to any of the obligations arising under or relating to this Agreement may be brought in the Court of Chancery of the State of Delaware (the "Chosen Court"). Each of the Parties irrevocably submits to and accepts with regard to any such action or proceeding, for itself and in respect of its property, generally and unconditionally, the nonexclusive jurisdiction of the Chosen Court. Each Party further irrevocably waives any claim that the Chosen Court lacks jurisdiction over such Party, and agrees not to plead or claim, in any legal action or proceeding with respect to this Agreement or the transactions contemplated by this Agreement brought in the Chosen Court, that the Chosen Court lacks jurisdiction over such Party. Each Party irrevocably consents to the service of process in any such action or proceeding by the mailing of copies of such service of process by registered or certified mail, postage prepaid, to such Party, at its address for notices set forth in Section 11.2. Such service shall become effective ten days after such mailing. Each Party irrevocably waives any objection to such service of process and further irrevocably waives and agrees not to plead or claim in any action or proceeding commenced under this Agreement or under any other documents contemplated by this Agreement that service of process was in any way invalid or ineffective. Subject to Section 11.8(b), the foregoing shall not limit the rights of any Party to serve process in any other manner permitted by law. The foregoing consents to jurisdiction shall not constitute general consents to service of process in the State of Delaware for any purpose except as provided above and shall not be deemed to confer rights on any Person other than the respective Parties to this Agreement.
- (b) Each of the Parties waives any right it may have under the laws of any jurisdiction to commence by publication any legal action or proceeding with respect to this Agreement. To the fullest extent permitted by Applicable Law, each of the Parties irrevocably waives the objection which it may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement in the Chosen Court and further irrevocably waives and agrees not to plead or claim that the Chosen Court is not a convenient forum for any such suit, action or proceeding.
- (c) The Parties agree that any judgment obtained by any Party or its successors or assigns or Permitted Transferees in any action, suit or proceeding referred to above may, in the discretion of such Party (or its successors or assigns or Permitted Transferees), be enforced in any jurisdiction, to the extent permitted by Applicable Law.

- (d) The Parties agree that the remedy at law for any breach of this Agreement may be inadequate and that should any dispute arise concerning the sale, disposition or issuance of any Units or the voting of such Units or any other matter under this Agreement, this Agreement shall be enforceable in a court of equity by an injunction or a decree of specific performance. Such remedies shall, however, be cumulative and nonexclusive, and shall be in addition to any other remedies which the Parties may have, whether at law or in equity.
- (e) To the fullest extent permitted by Applicable Law, each Party waives any right it may have to a trial by jury in respect of any litigation as between the Parties directly or indirectly arising out of, under or in connection with this Agreement or the transactions contemplated by this Agreement or disputes relating to this Agreement.

Section 11.9. <u>Incorporation by Reference</u>. Every exhibit attached to this Agreement and referred to in this Agreement is incorporated in this Agreement by reference unless this Agreement otherwise expressly provides.

Section 11.10. <u>Limitation on Liability</u>. The Members shall not be bound by, or be personally liable for, by reason of being a Member or Manager, a judgment, decree or order of a court or in any other manner, for the expenses, liabilities or obligations of the Company, and the liability of each Member shall be limited solely to the amount of such Member's Capital Contributions as provided (or deemed provided) under <u>Article II</u>.

Section 11.11. Amendment, Waiver or Modification. Subject to Section 6.1. (f), the Management Committee and the MIP Member (so long as the MIP Member holds its Requisite Holding) may amend, modify or waive any provision of this Agreement so long as such amendment, modification or waiver does not materially, adversely and disproportionately affect the rights of any Member contained in this Agreement relative to all other similarly situated Members (and Members holding the same class of Units shall be deemed similarly situated) or impose or increase any obligations on any Member without such Member's prior written consent. No amendment or modification to, or deletion of this Section 11.11 shall be effective unless unanimously approved by all of the Members. The Parties acknowledge and agree that neither (i) the addition of parties to this Agreement in accordance with the terms of this Agreement (and the updating of the Exhibits and Schedules in connection with the addition of parties to this Agreement) nor (ii) the issuance of New Units in accordance with the terms of this Agreement (including any necessary updates to this Agreement or any of its Exhibits or Schedules to reflect such additions, issuances or the terms of such additions or issuances), shall be deemed to be an amendment, modification or waiver requiring the consent of any Member. Any amendment to this Agreement to cure any non-material ambiguity, to correct or supplement any ministerial provision in this Agreement which may be inconsistent with any other provision in this Agreement, or to make or amend any other provisions with respect to matters or questions arising under this Agreement which will not be inconsistent with the provisions of this Agreement and, in each case, do not adversely affect any Member, shall require only the approval of the Management Committee (including the affirmative vote of a Manager nominated by each Founding Member so long as such Founding Member holds its Requisite Holding).

Section 11.12. <u>Further Action</u>. Each Member agrees to perform all further acts and execute, acknowledge, and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.

Section 11.13. <u>Investment Representations</u>. The parties to this Agreement agree as follows with respect to investment representations.

- (a) The undersigned Members understand:
- (i) that the Membership Interests evidenced by this Agreement have not been registered under the Securities Act, the Delaware Securities Act or any other state securities laws (collectively, the "Securities Acts") because the Company is issuing these Membership Interests in reliance upon the exemptions from the registration requirements of the Securities Acts providing for issuance of securities not involving a public offering;
- (ii) that the Company has relied upon the fact that the Membership Interests are to be held by each Member for investment; and
- (iii) that exemption from registration under the Securities Acts may not be available if the Membership Interests were acquired by a Member with a view to distribution.
- (b) Accordingly, each Member confirms to the Company that the Member is acquiring the Membership Interests for the Member's own account, for investment and not with a view to the resale or distribution of such Membership Interests.
- (c) Before acquiring a Membership Interest, each Member has investigated the Company and its business, and each Member has had made available to it all information necessary for the Member to make an informed decision to acquire the Membership Interest. Each Member considers itself to be a person possessing experience and sophistication as an investor adequate for the evaluation of the merits and risks of the Member's investment in the Membership Interest.
- (d) Each Member certifies to the Company that such Person is an "accredited investor" as defined under Regulation D of the Securities Act of 1933, as amended.
- Section 11.14. <u>Nature of Interests</u>. A Member's Membership Interest shall for all purposes be personal property. No Member has any interest in specific Company property.

Section 11.15. Restrictive Covenants.

(a) <u>Confidentiality</u>. Each of the Members agrees that throughout the term of this Agreement it shall keep (and shall direct its directors, officers, general and limited partners, employees, representatives, outside advisors, its Affiliates, and the Managers, directors of CBB, Observers, and observers on the CBB Board nominated by it to keep) confidential all non-public information relating to the Company received by such Member solely by reason of such Member's status as a member of the Company; <u>provided</u>, that each of the Members (1) may use such information in connection with any proposed or actual direct or indirect transfer of Units subject to customary obligations of confidentiality; and (2) may disclose such information to the direct or

indirect investors in such Member in accordance with such Member's policies and procedures. Without limitation, confidential information includes: (i) business or trade secrets (under applicable trade secrets or other law); (ii) price lists, methods, formulas, know-how; (iii) customer and supplier lists, distributor lists; (iv) product costs, marketing plans, research and development; and (v) financial information. For the avoidance of doubt, confidential information includes all such information even if obtained prior to the date of this Agreement. The confidentiality obligations set forth in this Section 11.15(a) shall not apply with respect to information which: (a) becomes known to such Member on a non-confidential basis from a source, other than the Company, its directors, officers, employees, representatives or outside advisors, which source was not known by such Member to be obligated to the Company or any of its Affiliates to keep such information confidential, or otherwise prohibited from transmitting the information to such Member or any of its representatives or agents by a contractual, legal or fiduciary obligation; (b) was in such Member's possession on a non-confidential basis prior to being furnished by or on behalf of the Company, from a source which was not known by such Member to be obligated to the Company or any of its Affiliates to keep such information confidential, or otherwise prohibited from transmitting the information to such Member or any of its representatives or agents by a contractual, legal or fiduciary obligation; or (c) becomes generally available to the public through no breach of this Agreement by any Party. Notwithstanding anything to the contrary in this Agreement, a Party may disclose non-public information if required to do so by law, rule, regulation, supervisory authority, or other applicable judicial, self-regulatory, securities exchange or government order or to such Member's or its Affiliates' auditors. To the extent permissible by law, a Member shall use reasonable efforts to provide prompt notice of such required disclosure to the Company prior to the making of such disclosure so that the Company may seek a protective order or other appropriate remedy. In the event that such protective order or other remedy is not obtained, the Party required to disclose the non-public information will disclose only that portion which such party is advised by outside counsel is legally required to be disclosed and will request that confidential treatment be accorded such portion of the non-public information.

(b) Non-Disparagement. Each Member agrees that it shall not, and shall cause their respective Affiliates not to, make or publish any derogatory or disparaging written, oral, or electronic statements with respect to the transactions or matters contemplated by this Agreement or related agreements regarding: (a) any other Member, the Company or its Subsidiaries or any of their predecessors, equityholders, trustees, beneficiaries and the present and former Representatives of the foregoing, individually and in their official capacities; or (b) any products, services, practices or operations of any of the Company or any of its Subsidiaries. Notwithstanding the covenants contained in this clause (b), no Member shall be prohibited or restricted from: (i) making or publishing any such statements that such Member reasonably believes in good faith to be necessary in responding to or initiating a bona fide claim involving such Person and any other Member or the Company or its Subsidiaries, and is otherwise not prohibited by the terms of this Agreement; or (ii) answering truthfully if compelled to do so in a deposition, lawsuit or similar dispute resolution proceeding.

Section 11.16. <u>Fiduciary Duties</u>. To the fullest extent permitted by Applicable Law, including Section 18-1101 of the Act, no Covered Person (other than Officers to the extent set forth in <u>Section 6.2(f)</u>) shall have any direct or indirect duties (including any and all fiduciary duties) or liabilities to the Company, CBB, any Member or any other Person. The Members shall

have no direct or indirect rights against any Covered Person, the Company or CBB, beyond any duties, liabilities and rights set forth in, and subject to, the express terms of this Agreement. The Parties acknowledge and agree that all other duties (including any and all fiduciary duties), liabilities and rights relating to the Company, CBB, or any Member, whether by operation of law or in equity, are irrevocably waived and released by the Members and the Company. Each Covered Person acknowledges and agrees that the duties and obligations of each Covered Person to each other and to the Company and CBB (as applicable) are only as expressly set forth in this Agreement and each Covered Person may fully rely on the express provisions of this Agreement and the CBB Regulations (as applicable) in performing as such for or on behalf of the Company or CBB. This Agreement is not intended to, and does not, create or impose any fiduciary duty or liability on any Covered Person, except that the Officers who are officers or employees of CBB, in the performance of its duties as such, shall owe to the Company the same duties of loyalty and due care owed to CBB in accordance with Section 6.2(f). Except as otherwise expressly stipulated in this Agreement, each Member acknowledges and agrees that each Member and each Manager, in their respective capacities as a Member or Manager or director of CBB or any other Subsidiary, as applicable, may decide or determine any matter subject to the approval of such Member or any such Manager pursuant to any provision of this Agreement or the CBB Regulations in the sole and absolute discretion of such Member or any such Manager. In making any such decision or determination, each Member or Manager shall have no duty, fiduciary or otherwise, to any other Member or to the Company or CBB. The Members acknowledge and agree that each Member and Manager, in their respective capacities as a Member or Manager or director of CBB, as applicable, have the right to make such determination solely on the basis of its own interests or in the case of a Manager the interests of the Member(s) that designated such Manager. Notwithstanding any other provision of this Agreement, the CBB Regulations, or otherwise applicable provision of law or equity, whenever in this Agreement or the CBB Regulations a Covered Person (other than Officers to the extent set forth in Section 6.2(f) is permitted or required to make a decision or take an action (including a decision or action that is in such Covered Person's "sole discretion" or "discretion" or under a grant of similar authority or latitude), the Covered Person (other than Officers to the extent set forth in Section 6.2(f)) shall be entitled to consider only such interests and factors as such Covered Person desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Company, CBB, or any other Person. Whenever in this Agreement or the CBB Regulations, any Covered Person is permitted or required to make a decision in such Covered Person's "good faith," or under another express standard, the Covered Person (other than Officers to the extent set forth in Section 6.2(f)) shall act under such express standard and shall not be subject to any other or different standard imposed by this Agreement, the CBB Regulations, or any other Applicable Law. Each of the Company and the Members agree that any claims against, actions, rights to sue, other remedies or other recourse to or against the Company or any of their respective Affiliates (including CBB), and each Manager for, or in connection with, any such decision or determination, in each case whether arising in common law or equity or created by rule of law, statute, constitution, contract (including this Agreement and the CBB Regulations) or otherwise, are in each case expressly released and waived by the Company and each Member, to the fullest extent permitted by law, as a condition of, and as part of the consideration for, the execution of this Agreement, and the incurring by the Member of the obligations provided in such agreements. Nothing in this Agreement or the CBB Regulations shall be deemed to alter the contractual obligations of a Member to another Member or to the Company or CBB pursuant to this Agreement, the CBB

Regulations, or any employment agreement. In making such express waiver of fiduciary duties, the Members recognize, acknowledge and agree that the provisions of this Agreement and the CBB Regulations, to the extent that they restrict or eliminate the duties or liabilities of a particular Person otherwise existing at law or in equity, replace such duties and liabilities existing at law or in equity of such Person. Notwithstanding any other terms of this Agreement to the contrary, whether express or implied, or any obligation or duty at law or in equity, and, to the fullest extent permitted by law, no Covered Person (other than Officers to the extent set forth in Section 6.2(f)) shall be liable to the Company, CBB, any other Subsidiary or the Company, any Member or any other Person for any breach of any fiduciary or other duties.

Section 11.17. Other Business. The Members acknowledge and agree that the Members and any of their respective Affiliates, officers, directors, director designees pursuant to this Agreement, partners, equityholders, agents and employees (collectively, the "Corporate Opportunities Groups") may engage in or possess an interest in any other business venture of any kind, nature or description, independently or with others, whether or not such ventures are competitive with the Company or any of its Subsidiaries, notwithstanding that representatives of Members or any of their respective Affiliates are serving on the Management Committee. No Member or any other person in their respective Corporate Opportunities Groups, as a Member or director of the Company or any of its Subsidiaries, shall have any obligation to communicate, present or offer first to the Company or any of its Subsidiaries any business opportunity or venture of any kind, nature or description that such Member or any person in their respective Corporate Opportunities Group, as the case may be, may wish to pursue from time to time, independently or with others. The foregoing waiver shall apply even if the opportunity or venture is of the character that, if presented to the Company, could be taken by the Company, or if presented to any other Member or other Member's Corporate Opportunities Group, could be taken by such Persons. Nothing in this Agreement shall be deemed to prohibit the Members or any of their respective Corporate Opportunities Groups from dealing, or otherwise engaging in business, with Persons transacting business with the Company or any of its Subsidiaries, including any client, customer, franchisee, supplier, lender or investor of the Company or any of its Subsidiaries. No Member or any of their respective Corporate Opportunities Groups shall be liable to the Company or its Subsidiaries or any Member for breach of any duty (contractual or otherwise) by reason of any such business ventures or of such Person's participation in such business ventures or by reasons of the fact that the Members or any member of their respective Corporate Opportunities Groups, directly or indirectly, pursues or acquires any such business opportunity or venture for itself, directs such opportunity or venture to another Person or does not communicate, present or offer first such opportunity or venture to the Company or any of its Subsidiaries. Neither the Company nor any Member shall have any rights or obligations by virtue of this Agreement or the transactions contemplated by this Agreement, in or to any independent venture of any other Member or any of their Corporate Opportunities Groups, or the income or profits or losses or distributions derived from such independent venture, and such ventures shall not be deemed wrongful or improper even if competitive with the business of the Company or any of its Subsidiaries.

Section 11.18. Valuation of Company.

(a) The Fair Market Value of the assets of the Company shall be determined by the Management Committee in its good faith judgment in such manner as its deems reasonable

and using all factors, information and data deemed to be pertinent. If a Founding Member holding its Requisite Holding disagrees with the determination by the Management Committee of Fair Market Value, or if the Management Committee fails to reach agreement with respect to the Fair Market Value, then within thirty days after notice of such determination or failure to reach agreement, the Fair Market Value shall be determined in accordance with Section 11.18(c).

- Fair Market Value. The "Fair Market Value" of the Company, means the (b) amount which the Members collectively would receive in an all-cash sale of the equity of the Company, together with its Subsidiaries assets and businesses as a going concern (free and clear of all liens and after payment of all indebtedness for borrowed money and other liabilities (including pension liabilities) that would customarily reduce the enterprise value of a business when computing the equity value of such business) in an arm's-length transaction (following a broad marketing campaign) with an Unaffiliated Third Party consummated on the day immediately preceding the date on which the event occurred which necessitated the determination of the Fair Market Value. Such determination shall assume that all of the Proceeds from such sale were paid directly to the Company other than an amount of such Proceeds necessary to pay transfer taxes payable in connection with such sale, which amount will not be received or deemed received by the Company). Any determination of "Fair Market Value" pursuant to this Section 11.18 shall not take into account any discount for lack of marketability, lack of control, ownership of a minority interest, illiquidity or similar discounts. After a determination of the Fair Market Value of the Company is made pursuant to Section 11.18(c) below, the Unit FMV will be determined by making a calculation reflecting the cash distributions which would be made to the Members in accordance with this Agreement (and after consideration of any cash distributions to management in any subsidiary agreement). Such calculation of Unit FMV shall be made in respect of such Unit as if the Company were deemed to have received such Fair Market Value in cash and then distributed the same to the Members in accordance with the terms of this Agreement incident to the liquidation of the Company after payment to all of the Company's creditors from such cash receipts other than payments to creditors who hold evidence of indebtedness for borrowed money or liabilities (including pension liabilities), the payment or satisfaction of which is already reflected in the calculation of the Fair Market Value of the Company. Such calculation of Unit FMV shall be made assuming that all of the convertible debt and other convertible securities were repaid or converted (whichever yields more cash to the holders of such convertible securities) and all options to acquire Units (whether or not currently exercisable) that have an exercise price below the Unit FMV were exercised and the exercise price paid. Except as otherwise provided in this Agreement or in any agreement, document or instrument contemplated by this Agreement, any amount to be paid under this Agreement by reference to the Fair Market Value shall be paid in full in cash, and any Unit being transferred in exchange for cash will be transferred free and clear of all liens.
- (c) <u>Determination of the Fair Market Value</u>. If this <u>Section 11.18(c)</u> applies, then each Founding Member holding its Requisite Holding (or, in the event of any Involuntary Transfer of Units, the Company and Involuntary Transferee) (an "<u>FMV Party</u>") shall select, as soon as reasonably practicable but in no event later than ten Business Days from the receipt of notice of the other FMV Parties identifying its appointment, an Independent Investment Banker to calculate the Fair Market Value (a "<u>Company Valuation</u>"). Each FMV Party and the Company shall each cooperate in good faith with the Independent Investment Bankers appointed by the FMV Parties and provide them with access to all information reasonably deemed relevant by such

Independent Investment Banker in preparing its Company Valuation. Each Independent Investment Banker shall determine the Company Valuation. Each of the FMV Parties shall provide each other with the report of the Independent Investment Banker retained by them and the amount of the Company Valuation. If the highest of the Company Valuations determined by the Independent Investment Bankers does not exceed 110% of the lowest, then the Fair Market Value shall be the average of the Company Valuations. If the higher of the Fair Market Values determined by the two Company Valuations exceeds 110% of the lower, then a neutral Independent Investment Banker will be selected by the mutual agreement of the other Independent Investment Bankers within ten days from the mutual delivery of the Company Valuations. The newly appointed Independent Investment Banker shall consider all relevant information in determining the valuation amount and shall provide its Company Valuation within thirty days from its appointment, which shall be final and binding upon the parties. The Company shall pay the fees and expenses of the Valuation Experts used to determine the valuation amount and the fees and expenses of the arbitrators (if any) used to determine the neutral Valuation Expert. If required by any such Valuation Expert or arbitrator, the Company shall execute a retainer and engagement letter containing reasonable terms and conditions, including customary provisions concerning the rights of indemnification and contribution by the Company in favor of such Valuation Expert or arbitrator and its officers, directors, partners, employees, agents and Affiliates.

Section 11.19. Deadlock; Mitigation. A deadlock ("Deadlock") occurs if a matter which is reasonably necessary for the successful operation and management of the Company or its Subsidiaries (including the matters specified in Section 5.5 but excluding the matters subject of Section 11.18), as determined by Managers entitled to vote at least 50% of the available votes, is not resolved following two properly convened meetings of the Management Committee. Upon the occurrence of a Deadlock, the dispute shall be referred to the respective Senior Executives for resolution. The Senior Executives shall meet as frequently as practicable and in good faith and use their respective reasonable best efforts to resolve the Deadlock as promptly as possible until the Deadlock is resolved. The first such meeting shall be at the principal place of business of the Company and each successive meeting shall be held on an alternating basis in the home jurisdiction of the Senior Executives. Pending resolution of a Deadlock, the affairs of the Company shall be managed by the Management Committee in a reasonable manner and in accordance with past practices but subject in all respects to the relevant approvals otherwise required hereunder, including those leading to the Deadlock. For purposes of the foregoing, "Senior Executive" shall mean (a) with respect to MIP Member, the Global Head of Macquarie Infrastructure Real Assets (MIRA), (b) with respect to the Ares Member, [•], (c) with respect to REST Member, [•] and (d) with respect to their permitted assignees, a senior officer of such permitted assignee that is at least three direct reports more senior than the most senior Manager appointed by such permitted assignee (or if less, the chief executive officer or equivalent of such permitted assignee).

Section 11.20. <u>REST Member Limitation of Liability</u>. Notwithstanding anything that may be expressed or implied in this Agreement, REST Member is acting as trustee of the Trust (as defined below) and the parties agree that: (a) the REST Member enters into this Agreement and any other document or instrument delivered in connection herewith in its capacity as trustee of the REST US Infrastructure No. 2 Trust (the "<u>Trust</u>") and in no other capacity. A liability of the REST Member arising under or in connection with this Agreement is limited to and can only be enforced against the REST Member to the extent (i) of the rights and obligations of the REST

Member (in its capacity as trustee) pursuant to the terms of the trust deed establishing the Trust (the "Trust Deed") or as against the assets of the Trust; or (ii) otherwise to which it can be satisfied out of the assets of the Trust out of which the REST Member is entitled to be and is in fact indemnified for that liability out of the assets of the Trust, (b) subject to clause (c) and (d) below, this limitation of the REST Member's liability applies despite any other provision of this Agreement or any other document or instrument delivered in connection herewith and extends to all liabilities and obligations of the REST Member in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement or any other document or instrument delivered in connection herewith, (c) the REST Member will have no personal liability to any other party to this Agreement or any other document or instrument delivered in connection herewith and the other parties waive their rights and release the REST Member from any personal liability, and no party may (i) sue the REST Member in any capacity other than as trustee of the Trust; (ii) seek the appointment of a liquidator, receiver or similar person to the REST Member; or (iii) prove in any liquidation, administration or arrangement of or affecting the REST Member, (d) the provisions of this Section 11.20 shall not apply to any obligation or liability of the REST Member to the extent that it is not satisfied because under the Trust Deed or by operation of law there is a reduction in the extent of the REST Member's indemnification out of the assets of the Trust as a result of the REST Member's fraud, gross negligence or breach of trust in its capacity as trustee of the Trust, and (e) the REST Member is not obligated to do or refrain from doing anything under this Agreement (including incur any liability) unless the REST Member's liability is limited in the same manner as set out in this Section 11.20.

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IN WITNESS WHEREOF, the Company and the Members have entered into this Agreement as of the day and year first above written.

RED FIBER HOLDINGS LLC Name: Title: By:_____ Name: Title: MIP V RF PARTNERS L.P. By:_____ Name: Title: Name: Title: ARES RF HOLDINGS L.P. By: Name: Title: By:_____ Name: Title:

8	REST Nominees No. 2 Pty Ltd, in its as trustee of the REST US Infrastructur	
	Ву:	
	Name: Γitle:	

Exhibit B Page 1

EXHIBIT A

LIST OF MEMBERS AND PERCENTAGE INTERESTS

Member Name and Address for Notice	Capital Contributions	Common Units	Series A Preferred Units	Incentive Units	Percentage Interest
[Name of MIP	\$			0	[63.32]%
Member]					
[Address]					
[REST]	\$			0	[16.46]%
[Address]					
[Name of Ares	\$	0		0	[20.22]%
Member]					
[Address]					
[Incentive LP]	\$0	0	0	600,000	0%
Total	\$			600,000	100%

DEFINITIONS; RULES OF INTERPRETATION

1. DEFINITIONS

"Act" means the Delaware Limited Liability Company Act (currently Chapter 18 of Title 6 of the Delaware Code), as amended from time to time.

"Adjacent Markets" means the geographic locations set forth on Exhibit H.

"Affiliate" with respect to any Person means any other Person directly or indirectly controlling, controlled by, or under common control with, such Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" means this Limited Liability Company Agreement of Red Fiber Holdings LLC, as amended from time to time.

"Annual Budget" means the budget of the Company and its Subsidiaries for any Fiscal Year.

"Applicable Law" with respect to any Person means all provisions of laws, statutes, ordinances, codes, rules, regulations, permits or certificates of any Governmental Authority applicable to such Person or any of its assets or property, and all judgments, injunctions, orders and decrees of any Governmental Authorities in proceedings or actions in which such Person is a party or by which any of its assets or properties are bound.

"Ares Group" means Ares Management Corporation and its direct and indirect subsidiaries.

"<u>Ares Member</u>" means Ares RF Holdings L.P. or, if any Qualifying Related Party of Ares RF Holdings L.P. becomes a Member and has a Percentage Interest that is greater than Ares RF Holdings L.P. and any other such Qualifying Related Party, such Qualifying Related Party.

"Ares Member Contribution" has the meaning set forth in the recitals.

"Ares Related Party" means: (i) any member of the Ares Group; (ii) any fund for which any member of the Ares Group is a sponsor, fund manager or fund advisor (directly or indirectly and whether jointly or alone); and (iii) any direct or indirect subsidiary or portfolio company of any of the foregoing.

"Business Day" means any day that is not a Saturday, Sunday, federal or State of New York legal holiday, or other day on which banks located in New York, New York are authorized or required by law to be closed.

"<u>Capital Contribution</u>" means an amount of cash and the fair market value of property contributed (or deemed contributed) to the capital of the Company by a Member.

"Cash Amounts" as of any given time of determination, with respect to each Member and without duplication means: (a) all distributions, whether in the form of cash or otherwise, received by such Member (or its predecessors-in-interest) pursuant to Section 4.1(a) with respect to Equity Securities held by such Member and (b) solely in connection with Drag Event, the aggregate amount of consideration received by such Member (or its predecessors-in-interest) with respect to the Equity Securities held by such Member as of the date of such Drag Event. For the avoidance of doubt, such Member's Cash Amounts shall not include any transaction or similar fees or expense reimbursements or indemnification payments paid to such Member or distributions pursuant to and in accordance with Section 4.1.

"Cash Dividend Trigger Event" means the failure by the Company to make any Series A Preferred Cash Dividend within thirty days following any Quarterly Date that occurs after the anniversary of the Effective Date.

"CBB" has the meaning set forth in the recitals to this Agreement.

"CBB Regulations" means the regulations of CBB.

"<u>Certificate of Formation</u>" means the Certificate of Formation of Red Fiber Holdings LLC, as amended from time to time.

"Chosen Court" has the meaning set forth in Section 11.8(a).

"Code" means the U.S. Internal Revenue Code of 1986, as amended from time to time, including the corresponding provisions of any successor law.

"Common Member" has the meaning set forth in Section 3.1(b).

"Common Original Issue Price" means \$1 per Common Unit, subject to appropriate adjustment in the event of any Unit dividend, split, combination, recapitalization, reclassification or other similar recapitalization.

"Common Percentage Interest" has the meaning set forth in Section 3.1(b).

"Common Units" has the meaning set forth in Section 3.1(b).

"Company" has the meaning set forth in the preamble to this Agreement.

"Company Group Member" means the Company and its Subsidiaries.

"Company Indemnification Agreement" has the meaning set forth in Section 5.3(d).

"Company Valuation" has the meaning set forth in Section 11.18(b).

"Conversion Rate" means a rate established by dividing the Series A Preferred Original Issue Price by the Common Original Issue Price.

"Corporate Opportunities Groups" has the meaning set forth in Section 11.17.

"Covered Persons" means (a) any Manager and (b) each officer, director, manager, shareholder, partner, general partner, trustee, member, controlling Affiliate, employee, operating partner, independent contractor, agent or representative of the Members, and each of their controlling Affiliates.

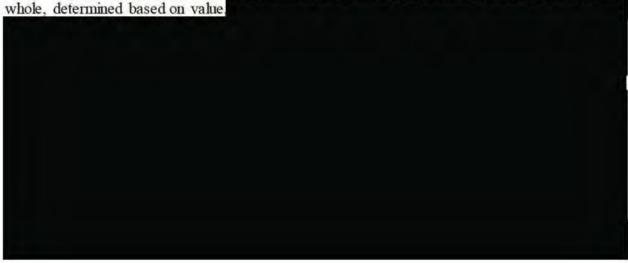
"Distributable Cash" as of any relevant date on which a determination is being regarding a potential distribution in accordance with Section 4.1 or Section 4.3 means the excess of (x) the sum of all cash of the Company over (y) the sum of cash disbursements for the expenses of the Company, including the amount of reasonably necessary reserves to pay normal operating expenses of the Company.

"<u>Distribution Unit</u>" as of any date means (x) with respect to each Common Unit, 1.00, (y) with respect to each Series A Preferred Unit, 1.00 and (z) with respect to the Incentive Units, 0.

"Drag-Along Process" has the meaning set forth in Section 8.5(b).

"Drag-Along Rights" has the meaning set forth in Section 8.5(b).

"Drag Event" means any transaction or series of transactions (structured as a sale, merger, consolidation, reorganization, asset sale or otherwise), which results in the sale or transfer of (a) a majority (or greater) of the assets of the Company and its Subsidiaries taken as a whole (determined based on value), (b) beneficial ownership or control of a majority (or greater) of the Equity Securities of the Company, or (c) beneficial ownership or control of a majority (or greater) of the Equity Securities of any one or more Subsidiary of the Company owning, controlling or otherwise constituting a majority of the assets of the Company and its Subsidiaries taken as a





"Dragged Member" has the meaning set forth in Section 8.5(a).

"Dragging Member" has the meaning set forth in Section 8.5(a).

"Effective Date" has the meaning set forth in the preamble to this Agreement.

"Employee" means any Officer, Manager, employee, consultant, broker, independent contractor, or other similarly situated individual with respect to the Company, or any of its Subsidiaries who holds a direct or indirect equity interest in the Company or any of such Subsidiaries.

"Equity Securities" with respect to any Person means (a) any equity interests of such Person, (b) any subscription, option, call, warrant or other right to acquire or receive any equity interests of such Person, or any security, instrument or obligation that is or may become convertible into or exchangeable for any equity interests of such Person or (c) any interest, right or participation in the share of the profits, income or distributions of such Person.

"<u>Fair Market Value</u>" means the enterprise value of the Company and its Subsidiaries as determined pursuant to <u>Section 11.18</u>.

"FATCA" means Sections 1471 through 1474 of the Code, and any Treasury Regulations under Sections 1471 through 1474 of the Code, or official interpretations of Sections 1471 through 1474 of the Code, and any intergovernmental agreements related to or implementing the foregoing, or laws or regulations implementing such agreements, including any successor provisions, subsequent amendments, and administrative guidance promulgated (or which may be promulgated in the future) such laws or regulations implementing such agreements.

"Fiscal Year" has the meaning set forth in Section 1.6.

"FMV Party" has the meaning set forth in Section 11.18(c).

Reserved Matters" means the transactions or actions set forth in Exhibit F.

"Reserved Matters" means the transactions or actions set forth in Exhibit E-1.

"Founding Member" means each of the Ares Member, REST Member, and the MIP

"Fully Participating Member" has the meaning set forth in Section 2.2(b).

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Member.

"Fundamental Representations" means, in respect of any Member and any relevant Transfer, that (A) such Member holds all right, title and interest in and to such Member's Units that they purport to hold, free and clear of all liens and encumbrances (as such terms are customarily defined), (B) the execution and delivery of the documents to be entered into by such Member in connection with the transaction, the performance of such Member's obligations thereunder and the consummation of the transactions contemplated thereby have been duly and validly authorized by all necessary action, if applicable, by such Member, (C) that such Member is duly organized and validly existing and has all requisite organizational power and authority to own, lease and operate its properties and to carry on its business as now being conducted, (D) such Member has all applicable power and authority to enter into the applicable documents to be entered into by such Member in connection with the transaction and consummate the transactions thereunder and the consummation by such Member of the transactions contemplated thereby have been duly and validly authorized and approved by all necessary action, and no other proceedings are necessary to authorize or approve the execution and delivery thereof by such Member, the performance by such Member of its obligations thereunder, and the consummation by such Member of the transactions contemplated thereby, (E) documents to be entered into by such Member in connection with the transaction have been duly and validly executed by such Member and delivered to the acquirer and such documents constitute a valid and binding obligation of such Member and are enforceable against such Member in accordance with their respective terms (subject to customary equitable exceptions), (F) none of the execution and delivery of the documents to be entered into in connection with the transaction, the performance of such Member's obligations or the consummation of the transactions thereunder will cause a breach or violation of the terms of any agreement, law or judgment, order or decree of any court or governmental agency, its organizational documents or any material agreement in which such Member is a party, require the consent or approval of any other Person or conflict with the organizational documents or any material agreement of such Member or require any consent or notification to any governmental authority, and (G) no broker, finder or similarly intermediary has acted for such Member and no broker's, finder's or similar fee or commission in connection therewith is or will be payable in connection with the transaction.

Exhibit D.

Reserved Matters" means the transactions or actions set forth in

"GAAP" means generally accepted accounting principles in the United States.

"Governmental Authority" means any instrumentality, subdivision, court, administrative agency, commission, official or other authority of the United States or any other country or any state, province, prefect, municipality, locality or other government or political subdivision of the foregoing, or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority.

"Incentive Member" has the meaning set forth in the preamble to this Agreement.

"Incentive Percentage" means the product of (a) 15% times (b) the quotient of (i) the number of outstanding Incentive Units as of such time divided by (ii) 1,000,000, provided that if such figure exceeds 15% it will be deemed to be limited to 15%.

"Incentive Unit" has the meaning set forth in Section 3.1(d).

"Independent Investment Banker" means an independent investment banking firm of national reputation with expertise in the telecommunications infrastructure sector to establish a valuation of the Company and its subsidiaries.

"Independent Manager" means (unless otherwise agreed by each of the Founding Members) a Manager who is not at the time of his or her initial appointment, or at any time while serving as Manager, and has not been at any time during the preceding five years: (a) a stockholder, director, officer, employee, partner, member, attorney or counsel to neither an Related Party of any Member; (b) a creditor, customer, supplier or other person who derives any of its purchases or revenues from its activities with the Related Parties; (c) a person or other entity controlling or under common control with any person excluded from serving as Independent Manager under clause (a) or (b) of this definition; or (d) a member of the immediate family of any person excluded from serving as Independent Manager under clause (a), (b) or (c) of this definition (where the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, whether through ownership of voting securities, by contract or otherwise).

"Initial Founding Member" means each of the Ares Member and the MIP Member.

"Reserved Matters" means the transactions or actions set forth in

Exhibit E-2.

"Initial LLC Agreement" has the meaning set forth in the recitals to this Agreement.

"Initial Public Offering" with respect to the Company or a Subsidiary of the Company, as applicable, means a fully underwritten, firm commitment initial public offering or series of public offerings pursuant to an effective registration statement under the Securities Act.

"Internal Rate of Return" means as of any date of determination, a calculation made using the "XIRR" function of the Microsoft Excel computer software program (with quarterly compounding) or similar successor program function to the XIRR function to determine the compounded internal rate of return on the applicable Unit, which shall include (a) for the Common Units and Series A Preferred Units (and any Common Units after giving effect to the exchange of such Series A Preferred Units) a deemed Capital Contribution at Closing of the amount set forth on Exhibit A on the date of this Agreement, (b) for the Common Units and Series A Preferred Units, all subsequent Capital Contributions following the Closing, and (c) for the Common Units and Series A Preferred Units, all distributions and Series A Preferred Cash Dividends made by the Company in respect of such Unit.

"Involuntary Transfer" means any transfer of title or beneficial ownership of Units on default, foreclosure, forfeit, divorce, court order, bankruptcy or other than on a voluntary decision on the part of a holder of Units.

"Involuntary Transferee" has the meaning set forth in Section 8.6.

"Long Term Plan" means the annual updated seven year business plan of the Company and its Subsidiaries. The initial Long Term Plan is attached as $\underline{\text{Exhibit } F}$.

"Macquarie Early Leaver Event" means,

"Macquarie Group" means Macquarie Group Limited and its direct and indirect subsidiaries.

"Management Committee" has the meaning set forth in Section 1.2.

"Managers" has the meaning set forth in Section 1.2.

"Member" means, each Common Member, each Series A Preferred Member and each Incentive Member, including, as of the date of this Agreement, the MIP Member, the REST Member, and the Ares Member.

"Member Indemnification Agreement" has the meaning set forth in Section 5.3(d).

"Member Manager" with respect to any Member means each Manager nominated by such Member in accordance with Section 5.1(b).

"Membership Interest" has the meaning set forth in Section 3.1(a).

"Merger" has the meaning set forth in the recitals to this Agreement.

"Merger Agreement" has the meaning set forth in the recitals to this Agreement.

"Merger Sub" has the meaning set forth in the recitals to this Agreement.

"Minimum Return",

"MIP Member" means MIP V RF Partners L.P. or, if any Qualifying Related Party of MIP V RF Partners L.P. becomes a Member and has a Percentage Interest that is greater than MIP V RF Partners L.P. and any other such Qualifying Related Party, such Qualifying Related Party.

"MIP Member Contribution" has the meaning set forth in the recitals.

"MIP Related Party" means (i) any member of the Macquarie Group, (ii) any fund for which any member of the Macquarie Group is a sponsor, fund manager or fund advisor (directly or indirectly and whether jointly or alone), and (iii) any direct or indirect subsidiary or portfolio company of any of the foregoing.

"MIP V" has the meaning set forth in the recitals to this Agreement.

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"New Units" means any Units or other securities, including debt securities, (other than contractual rights to receive payments, such as "phantom" equity or equity appreciation rights issued to employees or consultants of the Company) of the Company or any of its Subsidiaries, whether authorized now or in the future, and any rights, options, or warrants to purchase any Units and other securities of the Company or any of its Subsidiaries of any type whatsoever, including, any such rights that may become convertible into or exchangeable or exercisable for any securities or rights, options or warrants to purchase any Units in order to maintain their respective economic ownership interest in the Company. "New Units" shall not include (a) Units set forth on Exhibit A on the date of this Agreement to be issued on or prior to the Effective Date, (b) securities issued by the Company or any of its Subsidiaries in connection with any pro rata subdivision of securities or any pro rata combination of securities of the Company or any of its Subsidiaries, (c) securities sold in a Public Offering, (d) securities issued as consideration in any merger or recapitalization of the Company or issued as consideration for the acquisition of another Person or all or substantially all of the assets of another Person (whether by merger, recapitalization, business combination, or otherwise) or for other strategic reasons, not for the primary purpose of capital raising, (e) securities issued to any third party lenders as "equity kickers" in connection with a loan transaction pursuant to any agreement or arrangement approved in accordance with the provisions of this Agreement, or (f) Incentive Units not in excess of an aggregate of 1,000,000.

"Notices" has the meaning set forth in Section 11.2.

"Officer" means each person holding an office established by or pursuant to Section

"outstanding" means on any day those Units that are issued to a Member and reflected as outstanding on the Company's books and records on such day.

"Parent" has the meaning set forth in the recitals to this Agreement.

"Participant" has the meaning set forth in Section 8.4(b).

"Party" has the meaning set forth in the Preamble.

"<u>Percentage Interest</u>" with respect to any Member as of any date, means the percentage obtained by dividing (x) the number of Distribution Units beneficially owned by such Member as of such date, by (y) the number of Distribution Units beneficially owned by all Members as of such date.

"Permitted Transfer" has the meaning set forth in Section 8.2(a).

"Permitted Transferee" has the meaning set forth in Section 8.2(a).

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6.2.

"Person" means and include an individual, a partnership, a joint venture, a corporation, a limited liability company, a limited liability partnership, a trust, an incorporated organization and a Governmental Authority.

"Preemptive Rights Notice" has the meaning set forth in Section 2.2(b).

"Preferred Units" has the meaning set forth in Section 3.1(c).

"<u>Proceeds</u>" means combined net proceeds from the disposition in any Drag Event or other applicable sale transaction (after taking into account any transaction costs and expenses incurred by the Dragging Member in connection with such Drag Event and the costs and expenses described in <u>Section 8.5(c)</u>) of Membership Interests in the Company.

"Prohibited Person" means any Person that is (i) the subject of (or would reasonably be expected to cause the Company, any Member, or its or their respective Affiliates to become the subject of) Sanctions, (ii) owned or controlled by a Person that is the subject of Sanctions; (iii) organized or resident in any country or region that is the subject of comprehensive Sanctions; or (iv) reasonably expected to cause the Company, any Member, or its or their respective Affiliates to be in violation of counterterrorism, money laundering laws, export control, economic Sanctions, or other similar regulations.

"<u>Public Offering</u>" means a widely distributed sale of registered securities in an underwritten public offering pursuant to an effective registration statement filed with the SEC.

"Qualifiable Transferee" means any Person that, after giving effect to the relevant Transfer, (i) is not a Prohibited Person and (ii) would not reasonably be expected (based on due inquiry or advice from outside counsel, as appropriate), as a result of becoming a Member, to subject any Company Group Member to material adverse regulatory change.

"Qualifying Related Party" with respect to any Member means a Related Party of such Member which either (x) is already a Member or (y) is a Qualifiable Transferee.

"Quarterly Date" means the last Business Day of each of March, June, September, and December.

"Related Party" means, (a) with respect to each Member, each Affiliate of such Member, (b) without limiting the foregoing, with respect to the MIP Member, each MIP Related Party, (c) with respect to the REST Member, each REST Related Party, and (d) with respect to the Ares Member, each Ares Related Party.

"Representatives" of any Person means such Person's directors, managers, officers, employees, agents, attorneys, consultants, advisors, financing sources or other Persons acting on behalf of such Person.

"Requisite Holding"

"Response Deadline" has the meaning set forth in Section 8.4(b).

AMERICAS 101962392 LA LAN01:359839.4 "REST Group" means Retail Employees Superannuation Pty Ltd and its Affiliates.

"REST Member" means REST Nominees No. 2 Pty Ltd, an Australian proprietary limited company, in its capacity as trustee for the REST US Infrastructure No. 2 Trust or, if any Qualifying Related Party of REST Nominees No. 2 Pty Ltd in its capacity as trustee for the REST US Infrastructure No. 2 Trust becomes a Member and has a Percentage Interest that is greater than REST Nominees No. 2 Pty Ltd in its capacity as trustee for the REST US Infrastructure No. 2 Trust and any other such Qualifying Related Party, such Qualifying Related Party.

"REST Member Contribution" has the meaning set forth in the recitals.

"REST Related Party" means: (i) any member of the REST Group; (ii) any fund for which any member of the REST Group is a sponsor, fund manager or fund advisor (directly or indirectly and whether jointly or alone); (iii) any direct or indirect subsidiary or portfolio company of any of the foregoing; and (iv) any professional custodian, trustee or similar nominee holding on behalf and for the benefit of the REST Member.

"ROFO Acceptance Period" has the meaning set forth in Section 8.3(b).

"ROFO Exercise Period" has the meaning set forth in Section 8.3(b).

"ROFO Member" has the meaning set forth in Section 8.3(a).

"ROFO Offer" has the meaning set forth in Section 8.3(b).

"ROFO Offer Price" has the meaning set forth in Section 8.3(b).

"ROFO Sale Notice" has the meaning set forth in Section 8.3(b).

"ROFO Seller" has the meaning set forth in Section 8.3(a).

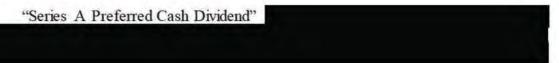
"ROFO Units" has the meaning set forth in Section 8.3(a).

"Sanctions" means all economic or financial sanctions or trade embargoes, including those imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, (b) the United Nations Security Council, the European Union, any European Union member state or Her Majesty's Treasury of the United Kingdom or (c) any other relevant jurisdiction.

"SEC" means the United States Securities and Exchange Commission or any other federal agency at such time administering the Securities Act.

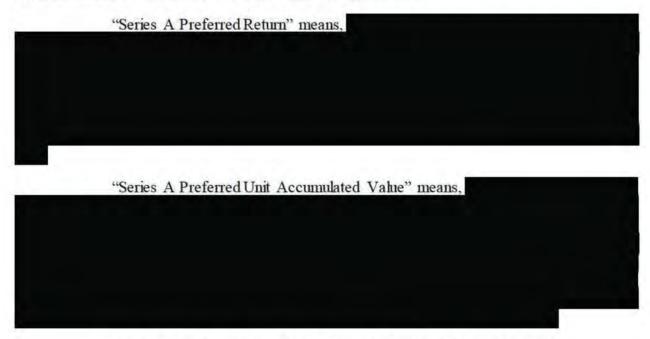
"Securities Act" has the meaning set forth in Section 9.2

"Securities Acts" has the meaning set forth in Section 11.13(a)(i).



"Series A Preferred Member" has the meaning set forth in Section 3.1(c).

"Series A Preferred Original Issue Price" means \$1 per Series A Preferred Unit, subject to appropriate adjustment in the event of any Unit dividend, split, combination, recapitalization, reclassification or other similar recapitalization.



"Series A Preferred Units" has the meaning set forth in Section 3.1(c).

"Subscription Agreement" has the meaning set forth in the preamble to this Agreement.

"Subsidiary" with respect to any Person means, (a) any corporation more than 50% of whose stock of any class or classes having by the terms of such stock ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is owned by such Person directly or indirectly through one or more Subsidiaries of such Person and (b) any partnership, association, joint venture or other entity in which such Person, directly or indirectly, through one or more Subsidiaries of such Person, has more than a 50% equity interest.

"Subsidiary Board" has the meaning set forth in Section 5.3(g).

"Tag-Along Buyer" has the meaning set forth in Section 8.4(a).

"Tag-Along Member" has the meaning set forth in Section 8.4(a).

AMERICAS 1019@392 LA_LAN01:359839.4 "Tag-Along Sale" has the meaning set forth in Section 8.4(a).

"Transaction" has the meaning set forth in the recitals to this Agreement.

"Transfer" has the meaning set forth in Section 8.1(a).

"Transfer Notice" has the meaning set forth in Section 8.4(a).

"Treasury Regulations" means the applicable provisions of the income tax regulations promulgated under the Code, as amended from time to time, including the corresponding provisions of any succeeding regulations.

"Trust" has the meaning set forth in Section 11.20.

"Trust Deed" has the meaning set forth in Section 11.20.

"<u>Unaffiliated Third Party</u>" means a purchaser or acquirer of Units who is not a Member or a Related Party of any Member, and in which a Member or Related Party of a Member is not an investor, lender, employee, consultant, advisor, officer, director, trustee, manager, stockholder, partner or member.

"Unit FMV" with respect to any Units means the amount per Unit that the holder of such Units would receive if the Company was sold for aggregate consideration equal to the Fair Market Value of all of the Units. Notwithstanding the foregoing, if the Units are listed on any established stock exchange, the Unit FMV shall be the closing sales price for such Unit (or the closing bid, if no sales were reported) as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Units) on the last market trading day prior to the day of determination, as reported in *The Wall Street Journal* or such other source as the Management Committee deems reliable.

"Units" means the Common Units and the Preferred Units.

"Unpaid Indemnity Amounts" has the meaning set forth in Section 5.3(d).

"Upstream Indemnifying Party" has the meaning set forth in Section 5.3(d).

"<u>Valuation Experts</u>" means an independent third party appraiser of national reputation with experience in the valuation of telecommunications infrastructure businesses who is qualified to make a Fair Market Value determination and has no material relationship with any Member or any of their respective Affiliates.

2. RULES OF INTERPRETATION

All article, section, subsection, schedule and exhibit references used in this Agreement are to articles, sections, subsections, schedules and exhibits to this Agreement unless otherwise specified. The exhibits and schedules attached to this Agreement constitute a part of this Agreement and are incorporated in this Agreement for all purposes.

- If a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb). Unless the context of this Agreement clearly requires otherwise, (i) words importing the masculine gender shall include the feminine and neutral genders and vice versa and (ii) words in the singular shall be held to include the plural and vice versa. The words "includes" or "including" means "including without limitation," the words "hereof," "hereby," "herein," "hereunder" and similar terms in this Agreement shall refer to this Agreement as a whole and not any particular section or article in which such words appear. Any reference to a law shall include any amendment to such law or any successor to such law and any rules and regulations promulgated under such law, unless the context otherwise requires. Currency amounts referenced in this Agreement are in U.S. Dollars.
- 2.3 Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. Whenever any action must be taken under this Agreement on or by a day that is not a Business Day, then such action may be validly taken on or by the next day that is a Business Day.
- 2.4 Each Party acknowledges that it and its attorneys have been given an equal opportunity to negotiate the terms and conditions of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party or any similar rule operating against the drafter of an agreement shall not be applicable to the construction or interpretation of this Agreement.
- 2.5 A reference to "includes" or "including" means "includes without limitation" or "including without limitation", as applicable.
- 2.6 The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions of this Agreement.
- 2.7 References to any agreement or contract, including this Agreement, shall be interpreted to mean such agreement or contract, as amended, supplemented, restated and/or otherwise modified in accordance with its terms from time to time.
- 2.8 A reference to an enactment or regulation shall include a reference to any subordinate law, decree, resolution, order, or the like made under the relevant enactment or regulation and is a reference to that enactment, regulation or subordinate law, decree, resolution, order, or the like, as amended, consolidated, modified, re-enacted or replaced from time to time.
- 2.9 References to any governmental entity, department, commission, board, bureau, agency, regulatory authority, instrumentality, or judicial or administrative body in any jurisdiction shall include any successor to such entity.

<u>JOINDER</u>
This JOINDER, dated as of [], by [], a [] (the "New Member"), relates to that certain Limited Liability Company Agreement of [•] LLC (the "LLC Agreement"), dated as of [•], 2020, by and among the Persons listed on Exhibit A to the LLC Agreement. Capitalized terms used in this Joinder without definition have the meanings set forth in the LLC Agreement.
The New Member acknowledges receipt of the LLC Agreement and agrees to become a party to the LLC Agreement and to be bound by the LLC Agreement. In particular and without limitation, the New Member acknowledges the details of its Membership Interest set forth on $\underline{\text{Exhibit A}}$ to the LLC Agreement, and assumes all of the rights and obligations of a Member as set forth in the LLC Agreement.
IN WITNESS WHEREOF, the Company has executed this Joinder as of the date first set forth above.
[●] LLC
By: Name: Title:
Acknowledged and Agreed:
[•]

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By:____ Name:

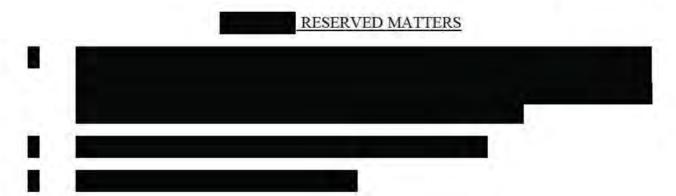
Title:

EXHIBIT D



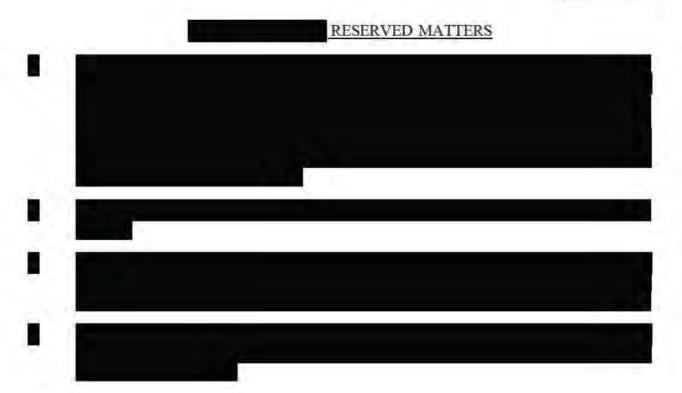
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EXHIBIT E-1



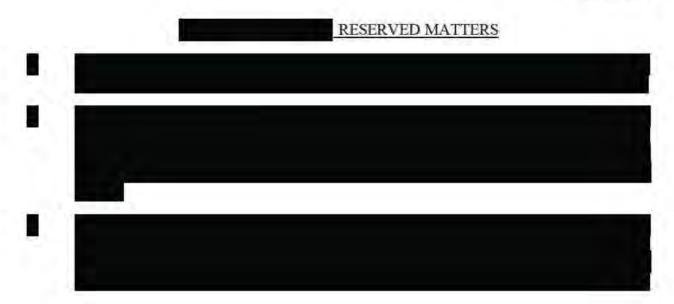
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EXHIBIT E-2



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EXHIBIT F



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<u>INITIAL LONG TERM PLAN</u>³

(Attached)

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 $^{^3\}quad NOTE\ TO\ FORM: To\ attach\ the\ initial\ Long\ Term\ Plan\ agreed\ at\ closing\ of\ the\ Merger\ Agreement.$

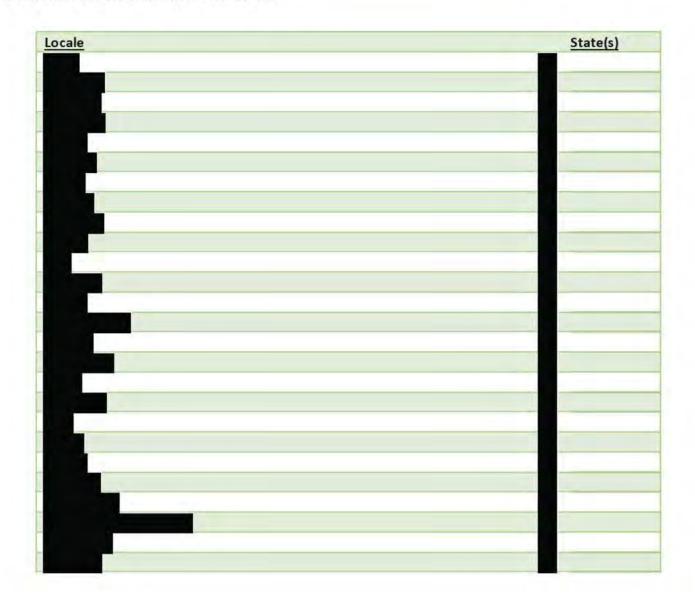
EXHIBIT H

ADJACENT MARKETS



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CONFIDENTIAL INFORMATION REDACTED



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IPO MATTERS; REGISTRATION RIGHTS

PART A: CERTAIN DEFINITIONS

Terms used in this $\underline{\text{Exhibit I}}$ shall have the following meaning, and capitalized terms used but not defined herein shall have the meanings assigned to them in $\underline{\text{Exhibit B}}$ to the Agreement:

"<u>Commission</u>" means the U.S. Securities and Exchange Commission and any governmental body or agency succeeding to the functions thereof.

"Common Stock" means the common Equity Securities of IPO Co.

"Conversion" has the meaning set forth in Part B-1 of this Exhibit I.

"<u>Damages</u>" has the meaning set forth in <u>Part C-6</u> of this <u>Exhibit I</u>.

"Demand Registration" has the meaning set forth in Part C-2(a) of this Exhibit I.

"FINRA" means the Financial Industry Regulatory Authority and any organization succeeding to the functions thereof.

"Holders" means the Members.

"Indemnified Party" has the meaning set forth in Part C-8 of this Exhibit I.

"Indemnifying Party" has the meaning set forth in Part C-8 of this Exhibit I.

"Inspectors" has the meaning set forth in Part C-5(g) of this Exhibit I.

"IPO Affiliate" has the meaning set forth in Part C-6 of this Exhibit I.

"IPO Co" has the meaning set forth in Part C-1 of this Exhibit I and shall be the issuer of the Common Stock.

"IPO Lock-Up Period" means the earlier of (i) 180 days after the effective date of the registration statement for the Initial Public Offering, and (ii) the expiration of the period during which the managing underwriters for the Initial Public Offering will prohibit the Company from effecting any other public sale or distribution of securities of the Company.

"Maximum Offering Size" has the meaning set forth in Part C-2(e) of this Exhibit I.

"NewCo" has the meaning set forth in Part B-1 of this Exhibit I.

"NewCo Common Stock" has the meaning set forth in Part B-1 of this Exhibit I.

"Non-Recourse Debt" means non-recourse indebtedness of a Subsidiary of CBB that is not a guarantor of any indebtedness of CBB or any Subsidiary of CBB that is a guarantor of any

indebtedness of CBB (including any "Non-Recourse Debt" as defined in the financing documents of any indebtedness of CBB).

"Piggyback Registration" has the meaning set forth in Part C-3(a) of this Exhibit I.

"Records" has the meaning set forth in Part C-5(g) of this Exhibit I.

"Registering Holders" has the meaning set forth in Part C-2(a)(ii) of this Exhibit I.

"Registrable Securities" means shares of Common Stock; provided, that as to any particular shares of Common Stock, such shares of Common Stock will cease to be Registrable Securities when (i) they have been effectively registered under the Securities Act and disposed of in accordance with the applicable registration statement, (ii) they have been sold pursuant to Rule 144, or (iii) they will have ceased to be outstanding or will have been repurchased by the Company.

"Registration Expenses" means all (i) registration and filing fees, and all other fees and expenses payable in connection with the listing of securities on any securities exchange or automated interdealer quotation system, (ii) fees and expenses of compliance with any securities or "blue sky" laws (including reasonable fees and disbursements of counsel in connection with "blue sky" qualifications of the securities registered), (iii) expenses in connection with the preparation, printing, mailing and delivery of any registration statements, prospectuses and other documents in connection therewith and any amendments or supplements thereto, (iv) security engraving and printing expenses, (v) internal expenses of the Company (including all salaries and expenses of its officers and employees performing legal or accounting duties), (vi) reasonable fees and disbursements of counsel for the Company and customary fees and expenses for independent certified public accountants retained by the Company (including the expenses relating to any comfort letters or costs associated with the delivery by independent certified public accountants of any comfort letters requested pursuant to Part C-5(h) of this Exhibit I), (vii) reasonable fees and expenses of any special experts retained by the Company in connection with such registration, (viii) reasonable fees, out-of-pocket costs and expenses of the Holders, including one counsel for all of the Holders participating in the offering selected by the Holders of a majority of the Registrable Securities to be sold for the account of all Holders in the offering, (ix) fees and expenses in connection with any review by FINRA of the underwriting arrangements or other terms of the offering, and all fees and expenses of any "qualified independent underwriter," including the fees and expenses of any counsel thereto, (x) fees and disbursements of underwriters customarily paid by issuers or sellers of securities, but excluding any underwriting fees, discounts and commissions attributable to the sale of Registrable Securities, (xi) costs of printing and producing any agreements among underwriters, underwriting agreements, any "blue sky" or legal investment memoranda and any selling agreements and other documents in connection with the offering, sale or delivery of the Registrable Securities, (xii) transfer agents' and registrars' fees and expenses and the fees and expenses of any other agent or trustee appointed in connection with such offering, (xiii) expenses relating to any analyst or investor presentations or any "road shows" undertaken in connection with the registration, marketing or selling of the Registrable Securities, (xiv) fees and expenses payable in connection with obtaining any rating of the Registrable Securities, including expenses relating to any presentations to rating agencies and (xv) all out-of pocket costs and expenses incurred by the Company or its appropriate officers in connection with their compliance with Part C-5(m) of this Exhibit I. Except as set forth in clause (viii) above, Registration Expenses will not include any out-of pocket expenses of the Holders (or the agents who manage their accounts).

"Representatives" has the meaning set forth in Part C-6 of this Exhibit I.

"Requesting Holders" means each of the Founding Members and, in the case of a Demand Registration under Part C-2, Members owning in the aggregate at least a 30% Percentage Interest immediately prior to such Public Offering; provided, however, in the context of a Demand Registration on Form S-3 (or a successor form) for sales on a delayed or continuous basis under Rule 415 under the Securities Act, the relevant Percentage Interests shall be 5% in lieu of 30%, and all other Members shall have unlimited Piggyback Registration rights and no Demand Registration rights.

"Rule 144" means Rule 144 promulgated under the Securities Act (or any similar provision then in force).

PART B: CORPORATE RESTRUCTURING

- The Management Committee, in connection with any underwritten Initial Public Offering, shall have the power and authority to effect the conversion of the Company's business form from a limited liability company to a Delaware corporation or the merger of the Company with or into a new or previously-established but dormant Delaware corporation having no assets or liabilities, debts or other obligations of any kind whatsoever other than those that are de minimis in amount and that are associated with its formation and initial capitalization (such a conversion or merger is referred to as a "Conversion" and such Delaware corporation is referred to as "NewCo"). Upon any such Conversion, the terms of this Agreement and all of the parties' rights and obligations hereunder with respect to their Membership Interests and other membership rights shall continue in effect (to the extent they survive the Initial Public Offering pursuant to their terms set forth in this Agreement), mutatis mutandis, with respect to the Equity Securities of "NewCo Common Stock") issued on account of the Membership Interests. Notwithstanding anything herein to the contrary, the Management Committee shall cooperate in good faith to consider, and shall use commercially reasonable efforts to implement, any alternative transaction structures that would effectuate the Initial Public Offering in a taxefficient manner to the Company and its Members without resulting in a lower valuation in the Initial Public Offering and without negatively impacting one or more Members.
- 2. Prior to any Conversion, each Series A Preferred Unit will be converted into Common Unit(s) in accordance with Section 3.4 and subsequently each Common Unit and each Incentive Unit will be converted into, or exchanged for, a number of shares of NewCo Common Stock. Without limitation of the foregoing, each holder of Membership Interests shall be entitled to receive that number of shares of Common Stock (or options to purchase NewCo Common Stock) of the corporation whose shares of Common Stock are being sold in connection with such Initial Public Offering with a value that equals the amount such holder would be entitled to receive, relative to the Membership Interests that such holder held in the Company immediately prior to such Conversion, if a liquidation of the Company had occurred immediately prior to the consummation of such Initial Public Offering; provided that the shares of NewCo Common Stock (or options to purchase NewCo Common Stock) received by each such holder shall as nearly as

practicable provide such holder and such corporation with the same economic and other rights, including the terms of any vesting regimen, to which such holder and such corporation, respectively, were entitled or subject with respect to such holder's Membership Interests prior to such Conversion.

3. In connection with a Conversion, each Member hereby covenants and agrees to take any and all such action and execute and deliver any and all such instruments and other documents as the Management Committee may reasonably request in order to effect or evidence such Conversion. Without limiting the generality of the foregoing, no Member shall have or be entitled to exercise any dissenter's rights, appraisal rights or other similar rights in connection with such Conversion and to the extent such rights are provided by Applicable Law such rights are hereby deemed waived to the fullest extent permitted under Applicable Law.

PART C – REGISTRATION RIGHTS

1. Registration Rights Agreement

Upon the occurrence of an Initial Public Offering, the Company, NewCo, or its relevant Subsidiary ("<u>IPO Co</u>") shall enter into a registration rights agreement with the Members on substantially the terms and conditions set forth in this <u>Part C</u> of <u>Exhibit I</u>.

- 2. Demand Registration.
- (a) If, following the expiration of the IPO Lock-Up Period, IPO Co shall receive a request from the Requesting Holders that IPO Co effect the registration under the Securities Act of all or any portion of the Registrable Securities beneficially owned by such Requesting Holders and/or their Permitted Transferees, and specifying the intended method of disposition thereof, then IPO Co will promptly give notice of such requested registration (each such request will be referred to herein as a "Demand Registration") at least thirty days prior to the anticipated filing date of the registration statement relating to such Demand Registration to the other Holders and thereupon will use its best efforts to effect, as expeditiously as possible, the registration under the Securities Act of:
 - (i) subject to the restrictions set forth in <u>Part C-2(e)</u>, all Registrable Securities for which the Requesting Holders have requested registration, and
 - (ii) subject to the restrictions set forth in <u>Part C-2(e)</u> and <u>Part C-3</u>, all other Registrable Securities that any Holders with rights to request registration under <u>Part C-3</u> (all such Holders, together with the Requesting Holders, and their Permitted Transferees, the "<u>Registering Holders</u>") beneficially own and have requested IPO Co to register by request received by IPO Co within fifteen days after such Holders receive IPO Co's notice of the Demand Registration, all to the extent necessary to permit the disposition (in accordance with the intended methods thereof as aforesaid) of the Registrable Securities to be registered; <u>provided</u>, that subject to <u>Part C-2(d)</u>, IPO Co will not be obligated to effect more than three Demand Registrations in the aggregate, other than Demand Registrations to be effected pursuant to a registration statement on Form S-3 (or any successor thereto), for which an unlimited number of Demand Registrations will be permitted, but not more than two during any twelve month period; provided, further, that IPO Co will not be

obligated to effect a Demand Registration that is an underwritten Public Offering unless the aggregate gross proceeds expected to be received from the sale of the Registrable Securities requested to be included in such Demand Registration equals or exceeds \$20,000,000 (or such lesser amount as would be received upon the sale of all of such Requesting Holders' remaining Registrable Securities). In no event will IPO Co be required to effect more than one Demand Registration hereunder within any six-month period.

- (b) Promptly after the expiration of the fifteen-day period referred to in Part C-2(a)(ii), IPO Co will notify all Registering Holders of the identities of the other Registering Holders and the number of shares of Registrable Securities requested to be included therein. At any time prior to the effective date of the registration statement relating to such registration, the Requesting Holders may revoke such request, without liability to any of the other Registering Holders, by providing a notice to IPO Co revoking such request. A request, so revoked, will be considered to be a Demand Registration unless (i) such revocation arose out of the fault of IPO Co (in which case IPO Co will be obligated to pay all Registration Expenses in connection with such revoked request), or (ii) the Requesting Holders reimburse IPO Co for all Registration Expenses relating to such revoked request.
- (c) IPO Co will be liable for and pay all Registration Expenses in connection with any Demand Registration, regardless of whether such registration is effected, except as set forth in <u>Part C-2(b)</u>.
 - (d) A Demand Registration will not be deemed to have occurred:
 - (i) unless the registration statement relating thereto (x) has become effective under the Securities Act and (y) has remained effective for a period of at least 180 days (or such shorter period in which all Registrable Securities of the Registering Holders included in such registration have actually been sold thereunder); <u>provided</u>, that such registration statement will not be considered a Demand Registration if, after such registration statement becomes effective, such registration statement is interfered with by any stop order, injunction or other order or requirement of the Commission or other governmental agency or court; or
 - (ii) if the Maximum Offering Size (as defined below) is reduced in accordance with Part C-2(e) such that less than 75% of the Registrable Securities of the Requesting Holders sought to be included in such registration are included and such registration includes Registrable Securities of Holders exercising rights to request registration under Part C-3.
- (e) If the managing underwriter advises IPO Co and the Requesting Holders that, in its view, the number of shares of Registrable Securities requested to be included in such registration (including any securities that IPO Co proposes to be included that are not Registrable Securities) exceeds the largest number of shares that can be sold without having an adverse effect on such offering, including the price at which such shares can be sold (the "Maximum Offering Size"),

IPO Co will include in such registration, in the priority listed below, up to the Maximum Offering Size:

- (i) first, all Registrable Securities requested to be registered by the Registering Holders (allocated, if necessary for the offering not to exceed the Maximum Offering Size, pro rata among such Registering Holders on the basis of the relative number of Registrable Securities then beneficially owned by each such Registering Holder), and
- (ii) second, any securities proposed to be registered for the account of any other Persons (including IPO Co), with such priorities among them as IPO Co will determine.
- (f) Upon prior written notice to each Requesting Holder, IPO Co may postpone effecting a registration pursuant to this Part C-2 on one occasion during any period of twelve consecutive months for a reasonable time specified in the notice but not exceeding 120 days (which period may not be extended or renewed), if (i) an investment banking firm of recognized national standing has advised IPO Co and the Requesting Holders in writing that effecting the registration would materially and adversely affect an offering of securities of IPO Co the preparation of which had then been commenced prior to receipt by IPO Co of the Demand Registration request, (ii) IPO Co reasonably believes that the registration would materially and adversely affect an acquisition, merger, recapitalization, consolidation, reorganization or similar transaction by or of IPO Co, or (iii) IPO Co is in possession of material non-public information the disclosure of which during the period specified in such notice the board of directors of IPO Co reasonably believes would be materially detrimental to IPO Co; provided, however, in such event, the Requesting Holders shall be entitled to withdraw such request and, if such request is withdrawn, such Demand Registration shall not be deemed a Demand Registration hereunder, and IPO Co shall pay all Registration Expenses related thereto.
- (g) In the event that any registration pursuant to this <u>Part C-2</u> will involve, in whole or in part, a Public Offering, the Holders of a majority of the Registrable Securities to be registered shall be entitled to select counsel for the Holders with respect to such registration and the underwriters with respect to such registration; <u>provided</u>, that the underwriters shall be reasonably acceptable to IPO Co.
 - 3. Piggyback Registration.
- (a) If IPO Co proposes to register any Equity Securities of IPO Co under the Securities Act (other than a registration on Form S-8 or Form S-4, or any successor forms, relating to shares of Common Stock issuable upon exercise of employee stock options or in connection with any employee benefit or similar plan of IPO Co or in connection with a direct or indirect acquisition by IPO Co of another Person), whether or not for sale for its own account (including any registration effected pursuant to Part C-2), IPO Co will each such time give prompt notice at least thirty days prior to the anticipated filing date of the registration statement relating to such registration to each Holder, which notice will set forth such Holder's rights under this Part C-3 and will offer such Holder the opportunity to include in such registration statement the number of beneficially owned Registrable Securities as each such Holder may request (a "Piggyback Registration"), subject to the provisions of Part C-3(b). Upon the request of any such Holder made within fifteen days after the receipt of notice from IPO Co (which request will specify the number of Registrable Securities intended to be registered by such Holder), IPO Co will use its best efforts

to effect the registration under the Securities Act of all Registrable Securities that IPO Co has been so requested to register by all such Holders; <u>provided</u>, that (i) if such registration involves an underwritten Public Offering, all such Holders requesting to be included in IPO Co's registration must sell their Registrable Securities to the underwriters on the same terms and conditions as apply to IPO Co or the Requesting Holders, as applicable, and (ii) if, at any time after giving notice of its intention to register any Equity Securities of IPO Co pursuant to this <u>Part C-3(a)</u> and prior to the effective date of the registration statement filed in connection with such registration, IPO Co will determine for any reason not to register such securities, IPO Co will give notice to all such Holders and, thereupon, will be relieved of its obligation to register any Registrable Securities in connection with such registration. No registration effected under this <u>Part C-3</u> will relieve IPO Co of its obligations to effect a Demand Registration to the extent required by <u>Part C-2</u>. IPO Co will pay all Registration Expenses in connection with each Piggyback Registration.

- (b) If a Piggyback Registration involves an underwritten Public Offering (other than any Demand Registration, in which case the provisions with respect to priority of inclusion in such offering set forth in Part C-2(e) will apply) and the managing underwriter advises IPO Co that, in its view, the number of shares that IPO Co and such Holders intend to include in such registration exceeds the Maximum Offering Size, IPO Co will include in such registration, in the following priority, up to the Maximum Offering Size:
 - (i) first, so much of the shares of Common Stock of IPO Co proposed to be registered for the account of IPO Co as would not cause the offering to exceed the Maximum Offering Size,
 - (ii) second, all Registrable Securities requested to be included in such registration by any Holders pursuant to Part C-3 (allocated, if necessary for the offering not to exceed the Maximum Offering Size, pro rata among such Holders on the basis of the relative number of shares of Registrable Securities then beneficially owned by each such Holder), and
 - (iii) third, any securities proposed to be registered for the account of any other Persons with such priorities among them as IPO Co will determine.

4. Lock-Up Agreements.

If any registration of Registrable Securities will be effected in connection with a Public Offering (other than the Initial Public Offering), neither IPO Co nor any Holder will effect any public sale or distribution, including any sale pursuant to Rule 144, of any securities of IPO Co (except as part of such Public Offering) within fourteen days prior to or forty days (or such lesser period as the lead or managing underwriters may permit) after the effective date of the registration statement (or the commencement of the offering to the public of such Registrable Securities in the case of a shelf registration statement). In addition, neither IPO Co nor any Holder will effect any public sale or distribution of any securities of IPO Co during the IPO Lock-Up Period. IPO Co hereby also agrees to use its reasonable best efforts to cause each other holder of securities of IPO Co (other than in the case of securities of IPO Co issued under dividend reinvestment plans or employee stock plans) purchased from IPO Co otherwise than in a Public Offering to so agree. In order to enforce the foregoing, IPO Co may impose stop-transfer instructions with respect to the

Registrable Securities of each Holder (and the securities of every other person subject to the foregoing restriction) until the end of such period.

5. Registration Procedures.

Whenever Holders request that any Registrable Securities be registered pursuant to <u>Part C-2</u> or <u>Part C-3</u>, subject to the provisions of such Sections, IPO Co will use its best efforts to effect the registration and the sale of such Registrable Securities in accordance with the intended method of disposition thereof as quickly as practicable, and, in connection with any such request:

- (a) IPO Co will as expeditiously as possible prepare and file with the Commission a registration statement on any form for which IPO Co then qualifies or that counsel for IPO Co will deem appropriate and which form will be available for the sale of the Registrable Securities to be registered thereunder in accordance with the intended method of distribution thereof, and use its best efforts to cause such filed registration statement to become and remain effective for a period of not less than 180 days, or in the case of a shelf registration statement, one year (or such shorter period in which all of the Registrable Securities of the Registering Holders included in such registration statement will have actually been sold thereunder).
- Prior to filing a registration statement or prospectus or any amendment or supplement thereto, IPO Co will, if requested, furnish to each participating Holder and each underwriter, if any, of the Registrable Securities covered by such registration statement copies of such registration statement as proposed to be filed, and thereafter IPO Co will furnish to such Holder and underwriter, if any, such number of copies of such registration statement, each amendment and supplement thereto (in each case including all exhibits thereto and documents incorporated by reference therein), the prospectus included in such registration statement (including each preliminary prospectus and any summary prospectus) and any other prospectus filed under Rule 424 or Rule 430A under the Securities Act and such other documents as such Holder or underwriter may reasonably request in order to facilitate the disposition of the Registrable Securities beneficially owned by such Holder. Each Holder will have the right to request that IPO Co modify any information contained in such registration statement, amendment and supplement thereto pertaining to such Holder and IPO Co will use its best efforts to comply with such request; provided, that IPO Co will not have any obligation so to modify any information if IPO Co reasonably expects that so doing would cause the prospectus to contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.
- (c) After the filing of the registration statement, IPO Co will (i) cause the related prospectus to be supplemented by any required prospectus supplement, and as so supplemented, to be filed pursuant to Rule 424 under the Securities Act, (ii) comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities covered by such registration statement during the applicable period in accordance with the intended methods of disposition by the Registering Holders thereof set forth in such registration statement or supplement to such prospectus and (iii) promptly notify each Registering Holder holding Registrable Securities covered by such registration statement of any stop order issued or threatened by the Commission or any state securities commission and take all reasonable actions required to prevent the entry of such stop order or to remove it if entered and promptly notify such Registering Holder of such lifting or withdrawal of such order.

- (d) IPO Co will use its best efforts to (i) register or qualify the Registrable Securities covered by such registration statement under such other securities or "blue sky" laws of such jurisdictions in the United States as any Registering Holder holding such Registrable Securities reasonably (in light of such Holder's intended plan of distribution) requests and (ii) cause such Registrable Securities to be registered with or approved by such other governmental agencies or authorities as may be necessary by virtue of the business and operations of IPO Co and do any and all other acts and things that may be reasonably necessary or advisable to enable such Holder to consummate the disposition of the Registrable Securities beneficially owned by such Holder; provided, that IPO Co will not be required to (x) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this Part C-5(d), (y) subject itself to taxation in any such jurisdiction or (z) consent to general service of process in any such jurisdiction.
- (e) IPO Co will immediately notify each Registering Holder holding such Registrable Securities covered by such registration statement, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the occurrence of an event requiring the preparation of a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and promptly prepare and make available to each such Holder and file with the Commission any such supplement or amendment.
- (f) Subject to Part C-2(g), IPO Co will have the right to select an underwriter or underwriters in connection with any Public Offering initiated by IPO Co. In connection with any Public Offering, IPO Co will enter into customary agreements (including an underwriting agreement in customary form) and take such all other actions as are reasonably required in order to expedite or facilitate the disposition of such Registrable Securities in any such Public Offering, including the engagement of a "qualified independent underwriter" in connection with the qualification of the underwriting arrangements with FINRA.
- Upon execution of confidentiality agreements in form and substance reasonably satisfactory to IPO Co, IPO Co will make available for inspection by any Registering Holder and any underwriter participating in any disposition pursuant to a registration statement being filed by IPO Co pursuant to this Part C-5 and any attorney, accountant or other professional retained by any such Holder or underwriter (collectively, the "Inspectors"), all financial and other records, pertinent corporate documents and properties of IPO Co (collectively, the "Records") as will be reasonably necessary or desirable to enable them to exercise their due diligence responsibility, and cause IPO Co's officers, directors and employees to supply all information reasonably requested by any Inspectors in connection with such registration statement. Records that IPO Co determines, in good faith, to be confidential and that it notifies the Inspectors are confidential will not be disclosed by the Inspectors unless (i) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in such registration statement or (ii) the release of such Records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction or otherwise required by any applicable legal requirement (including complying with any oral or written questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process). Each Registering Holder agrees that information obtained by it as a result of such inspections that is confidential and material and will not be used by it or its IPO

Affiliates as the basis for any market transactions in the Equity Securities of IPO Co unless and until such information is made generally available to the public. Each Registering Holder further agrees that, upon learning that disclosure of such Records is sought in a court of competent jurisdiction, it will give notice to IPO Co and allow IPO Co, at its expense, to undertake appropriate action to prevent disclosure of the Records deemed confidential.

- (h) IPO Co will furnish to each Registering Holder and to each such underwriter, if any, a signed counterpart, addressed to such Holder or underwriter, of an opinion or opinions of counsel to IPO Co and will use its reasonable best efforts to so furnish to such Persons a comfort letter or comfort letters from IPO Co's independent public accountants, each in customary form and covering such matters of the kind customarily covered by opinions or comfort letters, as the case may be, as a majority of such Holders or the managing underwriter therefor reasonably requests.
- (i) IPO Co will otherwise use its best efforts to comply with all applicable rules and regulations of the Commission, and make available to its Holders, as soon as reasonably practicable, an earnings statement or such other document covering a period of twelve months, beginning within the first full calendar month after the effective date of the registration statement, which earnings statement or that will satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder.
- (j) IPO Co may require each Registering Holder, and upon request of IPO Co each Registering Holder agrees, promptly to (i) furnish in writing to IPO Co such information regarding such Registering Holder and the distribution of the Registrable Securities as IPO Co may from time to time reasonably request and such other information as may be legally required in connection with such registration, and (ii) in the event of an underwritten offering, enter into and perform its obligations under the underwriting agreement associated therewith.
- (k) Each such Registering Holder shall, upon receipt of any notice from IPO Co of the happening of any event of the kind described in Part C-5(e), forthwith discontinue disposition of Registrable Securities pursuant to the registration statement covering such Registrable Securities until such Holder's receipt of the copies of the supplemented or amended prospectus contemplated by Part C-5(e), and, if so directed by IPO Co, such Holder will deliver to IPO Co all copies in its possession, other than any permanent file copies then in such Holder's possession, of the most recent prospectus covering such Registrable Securities at the time of receipt of such notice. If IPO Co will give such notice, IPO Co will extend the period during which such registration statement will be maintained effective (including the period referred to in Part C-5(e) to the date when IPO Co will make available to such Holder a prospectus supplemented or amended to conform with the requirements of Part C-5(e).
- (l) IPO Co will use its best efforts to list all Registrable Securities covered by such registration statement on any securities exchange or quotation system on which the Common Stock is then listed or traded.
- (m) IPO Co will have appropriate officers of IPO Co (i) prepare and make presentations at any "road shows" and before analysts and rating agencies, as the case may be, (ii) take other actions to obtain ratings for any Registrable Securities and (iii) otherwise use their best efforts to

cooperate as reasonably requested by the Registering Holders and the underwriters in the offering, marketing or selling of the Registrable Securities.

6. Indemnification by IPO Co.

IPO Co shall indemnify and hold harmless each Registering Holder holding Registrable Securities covered by a registration statement, its officers, directors, employees, partners, shareholders, managers, members and agents (collectively, "Representatives"), and each Person, if any, who controls such Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Securities Exchange Act (each such Person, an "IPO Affiliate") and its Representatives from and against any and all losses, claims, damages, liabilities and expenses (including reasonable expenses of investigation and reasonable attorneys' fees and expenses) ("Damages") caused by or relating to any untrue statement or alleged untrue statement of a material fact contained in any registration statement or prospectus relating to the Registrable Securities (as amended or supplemented if IPO Co will have furnished any amendments or supplements thereto prior to the sale of any Registrable Securities covered by such registration statement or prospectus) or any preliminary prospectus, or caused by or relating to any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such Damages are caused by or related to any such untrue statement or omission or alleged untrue statement or omission so made based upon information furnished in writing to IPO Co by such Holder or on such Holder's behalf expressly for use therein. IPO Co also agrees to indemnify any underwriters of the Registrable Securities, their officers and directors and each Person who controls such underwriters within the meaning of Section 15 of the Securities Act or Section 20 of the Securities Exchange Act on the same basis as that of the indemnification of the Holders provided in this Part C-6. The indemnification provided for under this Part C-6 shall remain in full force and effect and shall survive the transfer of the Registrable Securities by the Holders as permitted hereunder.

7. Indemnification by Participating Holders.

Each Registering Holder holding Registrable Securities included in any registration statement shall, severally but not jointly, indemnify and hold harmless IPO Co, its Representatives and its IPO Affiliates and such IPO Affiliates' Representatives to the same extent as the foregoing indemnity from IPO Co to such Holder, but only with respect to information furnished in writing by such Holder or on such Holder's behalf expressly for use in any registration statement or prospectus relating to the Registrable Securities, or any amendment or supplement thereto, or any preliminary prospectus. Each such Holder shall also indemnify and hold harmless underwriters of the Registrable Securities, their officers and directors and each Person who controls such underwriters within the meaning of either Section 15 of the Securities Act or Section 20 of the Securities Exchange Act on substantially same basis as that of the indemnification of IPO Co provided in this Part C-7. As a condition to including Registrable Securities in any registration statement, IPO Co may require that it will have received an undertaking reasonably satisfactory to it from any underwriter to indemnify and hold it harmless to the extent customarily provided by underwriters with respect to similar securities. No Registering Holder will be liable under this Part C-7 for any Damages in excess of the net proceeds realized by such Holder in the sale of Registrable Securities of such Holder to which such Damages relate.

8. Conduct of Indemnification Proceedings.

If any proceeding (including any governmental investigation) will be instituted involving any Person in respect of which indemnity may be sought, such Person (an "Indemnified Party") will promptly notify the Person against whom such indemnity may be sought (the "Indemnifying Party") in writing and the Indemnifying Party will assume the defense thereof, including the employment of counsel reasonably satisfactory to such Indemnified Party, and will assume the payment of all fees and expenses; provided, that the failure of any Indemnified Party so to notify the Indemnifying Party will not relieve the Indemnifying Party of its obligations hereunder except to the extent that the Indemnifying Party is materially prejudiced by such failure to notify. In any such proceeding, any Indemnified Party will have the right to retain its own counsel, but the fees and expenses of such counsel will be at the expense of such Indemnified Party unless (a) the Indemnifying Party and the Indemnified Party will have mutually agreed to the retention of such counsel or (b) in the reasonable judgment of such Indemnified Party representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that, in connection with any proceeding or related proceedings in the same jurisdiction, the Indemnifying Party will not be liable for the reasonable fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) at any time for all such Indemnified Parties, and that all such fees and expenses will be reimbursed as they are incurred. In the case of any such separate firm for the Indemnified Parties, such firm will be designated in writing by the Indemnified Parties. The Indemnifying Party will not be liable for any settlement of any proceeding effected without its written consent (which consent will not be unreasonably withheld), but if settled with such consent, or if there be a final judgment for the plaintiff, the Indemnifying Party will indemnify and hold harmless such Indemnified Parties from and against any loss or liability (to the extent stated above) by reason of such settlement or judgment. Without the prior written consent of the Indemnified Party (which consent will not be unreasonably withheld), no Indemnifying Party will effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Party is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party, unless such settlement includes an unconditional release of such Indemnified Party from all liability arising out of such proceeding.

9. Contribution.

If the aforementioned indemnification is unavailable to the Indemnified Parties in respect of any Damages, then each such Indemnifying Party, in lieu of indemnifying such Indemnified Party, will contribute to the amount paid or payable by such Indemnified Party as a result of such Damages (a) as between IPO Co and the Registering Holders holding Registrable Securities covered by a registration statement on the one hand and the underwriters on the other, in such proportion as is appropriate to reflect the relative benefits received by IPO Co and such Holders on the one hand and the underwriters on the other, from the offering of the Registrable Securities, or if such allocation is not permitted by applicable law, rule or regulation, in such proportion as is appropriate to reflect not only the relative benefits but also the relative fault of IPO Co and such Holders on the one hand and of such underwriters on the other in connection with the statements or omissions that resulted in such Damages, as well as any other relevant equitable considerations, and (b) as between IPO Co on the one hand and each such Holder on the other, in such proportion as is appropriate to reflect the relative fault of IPO Co and of each such Holder in connection with such statements or omissions, as well as any other relevant equitable considerations. The relative benefits received by IPO Co and such Holders on the one hand and such underwriters on the other will be deemed to be in the same proportion as the total proceeds from the offering (net of underwriting discounts and commissions but before deducting expenses) received by IPO Co and such Holders bear to the total underwriting discounts and commissions received by such underwriters, in each case as set forth in the table on the cover page of the prospectus. The relative fault of IPO Co and such Holders on the one hand and of such underwriters on the other will be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by IPO Co and such Holders or by such underwriters. The relative fault of IPO Co on the one hand and of each such Holder on the other will be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by such party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

IPO Co and the Registering Holders agree that it would not be just and equitable if contribution pursuant to this Part C-9 were determined by pro rata allocation (even if the underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an Indemnified Party as a result of the Damages referred to in the immediately preceding paragraph will be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Part C-9, no underwriter will be required to contribute any amount in excess of the amount by which the total price at which the Registrable Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any Damages that such underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission, and no Registering Holder will be required to contribute any amount in excess of the amount by which the total price at which the Registrable Securities of such Holder were offered to the public (less underwriters' discounts and commissions) exceeds the amount of any Damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. Each Registering Holder's obligation to contribute pursuant to this Part C-9 shall be several in the proportion that the proceeds of the offering received by such Holder bears to the total proceeds of the offering received by all such Registering Holders and not joint.

10. Public Offering Indemnification and Contribution.

To the extent that the indemnification or contribution provisions of an underwriting agreement entered into by IPO Co and Registering Holders conflicts with the terms of <u>Parts C-7</u>, <u>C-8</u> or <u>C-9</u>, the terms of the underwriting agreement shall control and govern.

11. Participation in Public Offering.

No Person may participate in any Public Offering unless such Person (a) agrees to sell such Person's securities on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements and (b) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents

reasonably required under the terms of such underwriting arrangements and the provisions of this Exhibit I in respect of registration rights.

12. Rule 144 and Form S-3.

Commencing as soon as practicable after the consummation of the Initial Public Offering, IPO Co will use its best efforts to ensure that the conditions to the availability of Rule 144 set forth in paragraph (c) thereof will be satisfied. Upon the request of any Holder, IPO Co will deliver to such Holder a written statement as to whether it has complied with such requirements. IPO Co shall use its reasonable best efforts to cause all conditions to the availability of Form S-3 (or any successor form) under the Securities Act for the filing of registration statements under this Exhibit I to be met as soon as practicable after the consummation of the Initial Public Offering.

13. No Transfer of Registration Rights.

None of the rights of Holders hereunder will be assignable by any Holder to any Person acquiring securities in any Public Offering or pursuant to Rule 144.

14. Limitations of Subsequent Registration Rights.

IPO Co agrees that it will not enter into any agreement with any holder or prospective holder of any securities of IPO Co on terms more favorable than this Exhibit I.